



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

January 24, 1978

ATTORNEY GENERAL OPINION NO. 78- 34

Mr. Melvin M. Gradert  
County Administrator  
Harvey County Courthouse  
Newton, Kansas 67114

Re: Counties--Mental Retardation Services--Funds

Synopsis: A county which contracts with a nonprofit private corporation to provide mental retardation services pursuant to K.S.A. 19-4004 may levy a tax of .25 mills for construction of facilities to house such services, and may erect such a building on land owned by the nonprofit corporation provided it is done pursuant to an agreement that title to the structure will vest in the board of county commissioners and that the structure is such that it may be removed from the property upon the expiration of the agreement.

\* \* \*

Dear Mr. Gradert:

You advise that Harvey County contracts with Mid-Kansas Developmental Services, Inc., a nonprofit corporation, to provide mental retardation services in Harvey County, Kansas, and levies a tax for that purpose, pursuant to K.S.A. 1977 Supp. 19-4004. That statute authorizes three separate levies, one for mental health services, one for mental retardation services, and one for the purpose of "building, equipping, repairing, remodeling and furnishing a community mental health center and/or facility for the mentally retarded." Each levy is subject to the limitations prescribed by K.S.A. 79-1947. Under K.S.A. 1977 Supp. 19-4007, when, as here, a county contracts with a nonprofit corporation to provide mental retardation services, it may pay the amount agreed upon in such contract with the proceeds of a tax levied pursuant to K.S.A. 1977 Supp. 19-4004.

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You advise that the 1977 legislature amended K.S.A. 1976 Supp. 79-1947 to increase the levy which is permitted for mental retardation services from .5 mills to .75 mills. Mid-Kansas Developmental Services, Inc., has proposed that the county utilize this increased levy authority, levying the full .75 mills and setting aside one third thereof, or .25 mills, for a building fund, to be used for the construction of a building on property owned by that corporation.

First, in my judgment, the levy authorized by K.S.A. 1977 Supp. 19-4004 for mental retardation services, and subject to the limit of .75 by K.S.A. 79-1947, as amended by the 1977 legislature, may not be used for construction of a facility for the mentally retarded. Rather, the levy specifically authorized by K.S.A. 1977 Supp. 19-4004 for

"the purpose of creating and providing a special fund to be used in acquiring a site for, and the building, equipping, repairing, remodeling and furnishing of a community mental health center, and/or facilities for the mentally retarded, or for any one or more of such purposes"

may not be used for that purpose, and it is limited by K.S.A. 79-1947 to .25 mills. In addition, it may be imposed only after publication of a notice thereof, and an opportunity for a protest petition opposing said levy.

You inquire whether, if the county undertakes to construct a facility, whether it may do so on land owned by the nonprofit corporation, in view of the direction of K.S.A. 1977 Supp. 19-4004 that title to the building or buildings so erected shall vest in the board of county commissioners. The general rule, of course, is that buildings or other structures which are placed on or are affixed to the soil become part of the land and belong to its owner. 41 *Am. Jur. 2d, Improvements*, § 2. However, it is an established exception to this general rule that

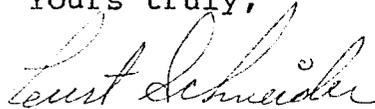
"a structure erected by one man on the land of another, with his permission, on an agreement or understanding that it may be removed at the pleasure of the builder, does not become a part of the real estate, but continues to be a personal chattel and the property

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of the person who erected it, and may be removed by him, at least if it is readily removable. Accordingly, buildings and other improvements placed on real estate may be treated as movable personal property if that was the intention of the parties concerned . . . ." 41 *Am. Jur. 2d, Improvements*, § 3.  
[Footnotes omitted.]

Thus, it is permissible for the contemplated building to be erected on land of the corporation, if it is agreed between the parties that title to the structure will vest in the board of county commissioners, and may be removed by the county at its pleasure. The application of these exceptions may be somewhat limited if the building is such that it may not be removed from the property, however. Within these limitations, however, it would be appropriate under certain circumstances for the building to be erected on the property of the corporation.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj