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April 19, 1979

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ATTORNEY GENERAL OPINION NO. 79- 66

Mr. Theodore H. Hill
County Counselor
Suite 315
Sedgwick County Courthouse
Wichita, Kansas 67203

Re: Counties and County Officers--County Hospitals--
Lease of Hospital Facilities

Synopsis: The provisions of K.S.A. 19-1860 et seq. do not permit the lease of the facilities of a county hospital established and operated thereunder for use as a medical school. However, since said legislative acts are not uniformly applicable to all counties, the county commissioners of any county to which said statutes apply may adopt a charter resolution exempting the county from all or pertinent portions of said statutory provisions and also providing substitute and additional provisions authorizing such lease.

In that event, such lease cannot amount to a divestment of all the county's right and title to such property, unless there is compliance with K.S.A. 1978 Supp. 19-211 regarding the sale or disposition of county property. Further, if such lease is to extend beyond the term of the county commissioners executing the same, the validity thereof depends on whether it is a commitment of a sort reasonably necessary to protection of the public property, interests or affairs being administered.

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Dear Mr. Hill:

Through James W. Pattinson, Assistant County Counselor, your office has requested our opinion on the following question:

"Is a Board of County Commissioners authorized, either statutorily or by their home-rule powers, to lease a county hospital established and operated pursuant to K.S.A. 19-1860 et seq. as amended to a state agency on a long-term (up to 99 years) basis for a nominal annual fee?"

As to the county's present statutory authority, the provisions of K.S.A. 19-1860 are relevant, since the provisions thereof delineate the authorized purposes for which a county hospital may be established. This statute provides that any county having a prescribed population and assessed valuation, and owning a site and buildings suitable for hospital purposes, may use said site and buildings

"for a county hospital for the poor; a sub-acute or extended care county hospital facility; a county rehabilitation hospital; a county general hospital; a county mental health center; a county public health center; a county care home; a county family consultation center or any other use compatible with the foregoing uses that the county commissioners of said county may determine to be in the best interest of said county . . . , or the board of county commissioners may by resolution declare that it is in the best interest of such county to rent, lease, or let said hospital; thereupon, such board of county commissioners may, at its discretion, rent, let or lease to any person, persons, corporations or society for the purpose of maintaining and operating said county hospital upon such terms and conditions as the commissioners may deem to be in the best interest of said county."
(Emphasis added.)

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The foregoing quoted provisions are important to your inquiry, because it is our understanding that the Board of County Commissioners of Sedgwick County desires to lease to the State of Kansas the county hospital facilities established and operated pursuant to K.S.A. 19-1860 et seq., to be used for the Wichita branch of the University of Kansas School of Medicine. In our judgment, while said statutory provisions authorize the board of county commissioners to lease the hospital facilities, a lease thereof for use as a medical school would not be permitted by this statute. Such lease would not be consonant with the statute's authorization to lease the facilities "for the purpose of maintaining and operating said county hospital."

It also should be noted that K.S.A. 19-1860d provides that "[e]very hospital established under this act shall be for the benefit of all the inhabitants of such county and of any person falling sick or being injured or maimed within its limits." In our opinion, to lease such county hospital for the purpose of converting them to medical school facilities would contravene such requirement.

You also have inquired whether the county could achieve its objective by exercising its home-rule powers. Counties are vested with limited powers of self-government by K.S.A. 1978 Supp. 19-101a, which provides in pertinent part:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties" (Emphasis added.)

It is evident that the foregoing constitutes a statutory grant of general legislative power to counties, subject to enumerated restrictions. The first such restriction is set out in the emphasized portion of the above-quoted provisions; it is the only one of the nine restrictions that is even arguably applicable to your inquiry. The remaining eight restrictions deal primarily with substantive areas of concern, respecting which counties are precluded from legislating, without regard to uniformity or non-uniformity of any applicable statutory provisions.

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By the first restriction set out above, the legislature has prevented counties from exercising their home rule powers where there exist legislative acts which apply uniformly to all counties. However, it is apparent that this restriction also has no effect on the exercise of home rule powers regarding the establishment and operation of county hospitals that are now governed by K.S.A. 19-1860 et seq., since these statutory provisions are not uniformly applicable to all counties. As previously noted, these statutory provisions are applicable only to counties having a prescribed population (more than 125,000) and assessed tangible valuation (more than \$150,000,000).

Thus, it is our opinion that the Board of County Commissioners of Sedgwick County (which meets the statutory criteria set out in K.S.A. 19-1860) may exercise its home rule powers by exempting said county from all or any portion of K.S.A. 19-1860 et seq. In accordance with subsection (b) of K.S.A. 1978 Supp. 19-101a, such exemption may be accomplished by the adoption of a charter resolution, which is defined by subsection (b) of K.S.A. 19-101b as "a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject." Therefore, the adoption of a charter resolution could exempt Sedgwick County from the pertinent statutory provisions restricting the use and purpose of a county hospital established and operated pursuant to K.S.A. 19-1860 et seq., and such charter resolution also could provide "substitute and additional provisions" authorizing the lease of such hospital facilities for use as a medical school. Since such charter resolution would extensively alter the character and purpose of the existing county hospital, it also would need to address the applicability of numerous other statutory provisions contained in K.S.A. 19-1860 et seq., other than those specifically dealing with the power of the board of county commissioners to lease such facilities. However, without benefit of a proposed charter resolution for our consideration, it is impossible for us to render comment beyond such generalized observation, since most, if not all, such additional provisions will involve policy determinations by the board of county commissioners.

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Implicit in the foregoing determination is our conclusion that, absent the previously discussed statutory restrictions, a county may validly enter into a long-term lease of the county hospital for use as a medical school. While we are aware that K.S.A. 1978 Supp. 19-211 prohibits the sale or disposal of county property, except under prescribed conditions, we do not find that such statute has application here. Our conclusion in this regard is based on our understanding of the Kansas Supreme Court's interpretation of this statute in State, ex rel, v. City of Garnett, 180 Kan. 405 (1956). In that case, the court considered the validity of a contract whereby Anderson County granted an easement to the City of Garnett in a certain portion of county property for the purpose of widening streets surrounding the courthouse square. The state, on the relation of the Anderson County Attorney, challenged such action on the grounds that the easement amounted to a "sale or disposal of" county property precluded by K.S.A. 19-211. The court rejected this argument, holding:

"This statute . . . must be interpreted as contemplating such a sale or disposal of the property as to completely divest the county of all its right and title to the property." Id. at 407.

Based on this decision, it is our opinion that a lease of the county hospital which did not divest the county of all its right and title to such property would be permissible.

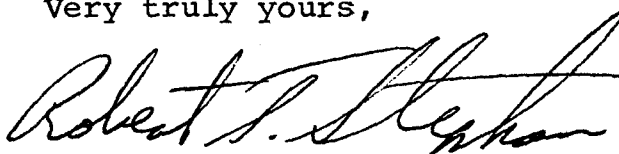
The final aspect of your inquiry that we have considered is whether such lease would violate the common law doctrine which prohibits the board of county commissioners from entering into contracts that are binding upon subsequent boards of county commissioners. Ordinarily, the power of a board of county commissioners to enter into a contract is limited in time to the term of the commissioners who make it. Id. at 408. The Kansas Supreme Court has considered this proposition on several instances, noting on occasion exceptions to this rule. The test enunciated by the court as to whether a contract entered into by a board of county commissioners is violative of this doctrine is set forth in Edwards County Comm'rs v. Simmons, 159 Kan. 41, 54 (1952), as follows:

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"[T]he test generally applied is whether the contract at issue, extending beyond the term, is an attempt to bind successors in matters incident to their own administration and responsibilities or whether it is a commitment of a sort reasonably necessary to protection of the public property, interests or affairs being administered. In the former case the contract is generally held to be invalid, and in the latter case valid."

This proposition also was addressed by the Court in the Garnett case. There, the court noted that the county commissioners had, "by resolution, declared it conducive to the interests of the inhabitants of Anderson county that certain streets abutting the courtyard, belonging to the county, be utilized for a public street and parking area," and in reciting the statement in Edwards quoted above, it concluded that the contract (easement) was valid, being of a sort reasonably necessary to the protection of "public property, interests or affairs being administered." 180 Kan. at 409. It is our opinion that a long-term lease of a county hospital to the state of Kansas for use as a medical school could warrant a similar conclusion. However, this is a factual determination upon which reasonable minds can differ. In the event that such lease would be judicially challenged, it would be the prerogative of the trier of facts to make such determination.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk