



STATE OF KANSAS

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July 24, 1980

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ATTORNEY GENERAL OPINION NO. 80-164

Mr. Stanley E. Antrim  
c/o Light, Yoxall, Antrim & Richardson  
P. O. Box 1278  
101 West 4th Street  
Liberal, Kansas 67901

Mr. H. Hobble, Jr.  
c/o Light, Yoxall, Antrim & Richardson  
P. O. Box 1278  
101 West 4th Street  
Liberal, Kansas 67901

Re: Counties and County Officers--Hospitals--Donations

Synopsis: The board of trustees of a hospital established pursuant to K.S.A. 1979 Supp. 19-1801 et seq. may not own or hold title to donated real estate, and any conveyance of an interest in hospital property (whether donated or not) must be executed by the board of county commissioners. Cited herein: K.S.A. 1979 Supp. 12-1615(a), K.S.A. 19-1801, 19-1804(f), and 19-1812.

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Dear Mr. Antrim and Mr. Hobble:

You request our opinion as to several questions relating to the authority of the Board of Trustees of Southwest Medical Center to acquire and dispose of donated property. Specifically, you pose the following questions:

Mr. Stanley E. Antrim  
Mr. H. Hobbble, Jr.  
Page Two  
July 24, 1980

"1. Does the Board have power to own and hold real and personal property outside Seward County, Kansas?

"2. Does the Board have the power to execute oil and gas leases and other instruments pertaining to mineral interest, whether minerals are located inside or outside Seward County, Kansas?

"3. Does the Board have the power to foreclose on its interest in real estate contracts in case of default; to execute deeds of conveyance or to enter into contracts of sale of real estate located inside or outside Seward County, Kansas?

"4. If the answer to any of the above is no, then can the Board of Trustees of Southwest Medical Center do these things in the name of Seward County or through the Board of County Commissioners under K.S.A. 19-1812?

"5. Under K.S.A. 19-1812, would the legal title be in the name of Seward County with control and equitable title in the hospital Board of Trustees?"

You state that Southwest Medical Center was organized in 1964, pursuant to K.S.A. 19-1801 et seq.

In addressing the questions which you have presented, this opinion will be limited to discussing the Board's powers under the applicable statutory provisions. It should be noted, however, that counties possess extensive home rule powers in reference to county hospital law. See Attorney General Opinion Nos. 74-375 and 79-47.

We now consider your questions in the order that they were presented.

"1. Does the Board have power to own and hold real and personal property outside Seward County, Kansas?"

In answering this question, several statutory provisions (relating to county hospitals established and operated pursuant to K.S.A. 19-1801 et seq.) appear to be pertinent. K.S.A. 19-1812 provides, in part, that,

Mr. Stanley E. Antrim  
Mr. H. Hobble, Jr.  
Page Three  
July 24, 1980

"[a]ny person . . . desiring to make donation of . . . real estate for the benefit of such hospital, shall have the right to vest title of the . . . real estate so donated in said county to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise or bequest of such property." (Emphasis added.)

K.S.A. 1979 Supp. 19-1804(f) provides, in part, that the board of trustees "shall be charged with the businesslike supervision, care and custody of all hospital property." Although these provisions would authorize the Board to have custody of real estate, there is no specific authority in K.S.A. 19-1801 et seq. that would allow a board of trustees to own or hold title to real estate, whether within or without Seward County, Kansas.

Neither, in our opinion, does K.S.A. 1979 Supp. 12-1615(a) permit the Board to own and hold real property outside Seward County, Kansas. Although the statute permits the title of donated property to be vested in the board of directors or trustees of "any public hospital that may be provided by law," it is our opinion that the specific provisions of K.S.A. 19-1801 et seq. must control over the more general provisions of K.S.A. 1979 Supp. 12-1615(a). As was stated in State, ex rel., v. Throckmorton, 169 Kan. 481, 486 (1950), specific legislation controls "where there is a conflict between a statute dealing generally with the subject, and another dealing specifically with a certain phase of it." Accordingly, it is our opinion that the board of trustees of Southwest Medical Center may not own or hold title to donated real estate, whether said real estate is within or without Seward County, Kansas.

"2. Does the Board have the power to execute oil and gas leases and other instruments pertaining to mineral interest, whether minerals are located inside or outside Seward County, Kansas?"

As stated above, the provisions of K.S.A. 19-1801 et seq. give only custody and supervision of hospital property to the board of trustees, and there is no statutory authority to allow the board to convey any interest in said property to third parties. Any such conveyance, whether it be the fee title to the property or a mineral interest therein, may only be executed by the board of county commissioners.

Mr. Stanley E. Antrim  
Mr. H. Hobble, Jr.  
Page Four  
July 24, 1980

"3. Does the Board have the power to fore-close on its interest in real estate contracts in case of default; to execute deeds of conveyance or to enter into contracts of sale of real estate located inside or outside Seward County, Kansas?"

Since, as stated above, the board of trustees only has the supervision and custody of hospital property, it is our opinion that the board has no statutory authority to perform any of the acts recited.

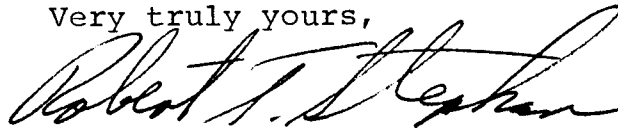
"4. If the answer to any of the above is no, then can the Board of Trustees of Southwest Medical Center do these things in the name of Seward County or through the Board of County Commissioners under K.S.A. 19-1812?"

K.S.A. 19-1812 provides that the title to donated property is to be vested in the county and that said property is to be "controlled" by the board of hospital trustees. Therefore, it is our opinion that, upon request of the board of hospital trustees, the board of county commissioners may take any action affecting the title to hospital property, so long as the board adheres to all applicable statutes relating to conveyances of county property.

"5. Under K.S.A. 19-1812, would the legal title be in the name of Seward County with control and equitable title in the hospital Board of Trustees?"

Pursuant to K.S.A. 19-1812, legal title to property donated thereunder rests in the county, and such property is to be controlled by the Board of Trustees "according to the terms of the deed, gift, devise or bequest of such property." Whether an "equitable title" exists (in donated property) in the Board of Trustees depends upon the terms of the particular deed, will, or other instrument. 76 Am.Jur.2d Trusts §17. If it appears that there was an intention to create a formal trust, then the Board of Trustees might be a beneficiary thereunder and the "equitable owner" of the trust property. Id. at §101.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General