



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-227

William A. Guilfoyle
Lehman, Guilfoyle & Hinkle
306 N.W. 2nd Street
Abilene, Kansas 67410

Re: Townships and Township Officers -- Hospitals --
Disposition of Real Property

Synopsis: A hospital district, operating as a body politic and corporate, has the power to request a partition in order to effect the disposition of property authorized under K.S.A. 80-21,100. In order to comply with K.S.A. 80-2195, however, either this property or the proceeds from its sale must be used for "hospital purposes" directly and immediately benefitting the hospital. Cited herein: K.S.A. 60-1003, 77-201, K.S.A. 1980 Supp. 80-2178, K.S.A. 80-2195, 80-21,100.

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Dear Mr. Guilfoyle:

You have requested an opinion concerning the powers of a hospital district organized pursuant to K.S.A. 1980 Supp. 80-2178 et seq., to dispose of an undivided interest in real property. Specifically, you inquire whether a hospital district has the power to request a partition of an undivided one-half interest in a 40-acre farm which has been conveyed.

A hospital district which is governed by the state and operated by its officers is a political and corporate entity. K.S.A. 80-2180. As such, it can exercise only those powers expressly conferred and such others as are necessarily or fairly implied in, or which are incidental to the powers expressly granted. The Kansas Supreme Court stated in City of Leavenworth v. Norton, 1 Kan. 432, 436 (1863), that the authorities to this effect are too numerous and too well known to need citation. Given this limitation on the powers of the district, we turn to the applicable statutory sections.

K.S.A. 80-21,100(b) establishes the method of disposition for real property valued at over \$500 (the right to dispose of it is expressly noted). That section states in pertinent part:

"[B]efore selling and conveying by deed any such real or personal property the board of directors shall negotiate a sale thereof and no such sale shall be completed and conveyance made until: (1) Said board of directors shall have solicited sealed bids by public notice inserted in one publication in a newspaper of general circulation in such district and such sale shall be to the highest responsible bidder after such notice, except such board of directors may reject any or all bids, and, in any such case, new bids may be called for as in the first instance; and (2) said bid has been accepted and a resolution accepting the same made a part of the records of said board of directors."

There is no express mention of the power of a hospital district to request a partition of an undivided interest in real property; however, we believe such power is necessarily implied. In its corporate capacity, a hospital district has the right to sue and be sued (K.S.A. 80-2180). This capacity has been recognized by the Kansas courts. DeForest v. Herbert, 204 Kan. 516, 464 P.2d 265 (1970).

Further support for this view can be gained from examination of the statutory sections allowing partitions and the Kansas case law. Partition actions are authorized under K.S.A. 60-1003. Subsection(a)(3) thereof states: "Persons claiming or having a specific or general lien upon all or any portion of the property may be made parties." A "person" is defined in K.S.A. 77-201 as including "bodies politic and corporate."

In addition, the Kansas Supreme Court in Miller v. Miller, 222 Kan. 317 (1977), noted that partition is a right favored by law, because it secures peace, promotes industry and enterprise and avoids compelling unwilling persons to use their property in common.

Therefore, in our judgment, a hospital district, operating in its corporate capacity, has the implied power to request a partition in order to effect the disposition of property as authorized by K.S.A. 80-21,100. However, we emphasize that it is necessary that the method of disposition following such partition be in strict conformance with the statute. Under no circumstances may a district negotiate a sale and thereby circumvent the competitive bidding laws. If the court allows the partition, the hospital's share is to be sold, as provided in K.S.A. 81-21,100; however, if the court finds that such partition cannot be made without manifest injury to the property, the district will need to pursue the sale of the undivided one-half interest. Although disposal of the property in a manner complying with the statute is aided by the discretion granted the court in partition proceedings, in our opinion, the sale of the hospital's one-half interest in the property by the court at a public auction is not an option. In Shell Oil Company v. Seeligson, 231 F.2d 14 (D.C. Kan. 1955), the court stated:

"In the exertion of its equitable jurisdiction, the court has a measure of discretion in adapting its judgment to the particular circumstances presented. The court may grant or deny partition in toto. It may partition the whole of the property in kind. It may sell all of the property and distribute the proceeds. It may partition part in kind and sell part. It may prescribe different terms and conditions for the sale of different parts . . . In short, the court may take any action not incompatible with the statutory law of the state which is reasonably appropriate in the circumstances to effectuate a just and equitable partition between the parties." 231 F.2d at 17. (Emphasis added.)

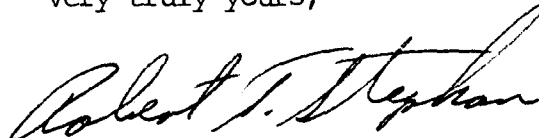
This broad discretion is also given by statute [K.S.A. 60-1003(d)], but is subject to the same limitation that it may not be exercised in violation of the specific statute compelling the sale of real estate (valued at \$500 or more) by competitive bid.

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An additional issue, however, and about which you do not specifically inquire, is the right of a hospital district to hold this property. K.S.A. 80-2195 allows the board of directors of a hospital district to accept any grants, donations or gifts to be "used for any hospital purpose." While the phrase "hospital purpose" has yet to be construed by the Kansas courts, other jurisdictions have confined it to those uses directly and immediately benefitting the hospital. 19A Words and Phrases, Hospital Purpose, p. 420 (1961) and 43A Words and Phrases, Use-Charitable, p. 270 (1961). The Kansas courts have in one instance allowed a charitable organization to "use" either the property itself or proceeds from the sale of property; however, the need for the benefit to be direct and immediate is still noted. See In Re Estate of Bauer, 192 Kan. 538 (1964) (allowing a masonic temple to use proceeds of a sale to satisfy the charitable use requirement).

Therefore, it is our opinion that hospital districts have the implied authority, in order to dispose of an undivided interest in real property pursuant to K.S.A. 80-21,100, to request a partition under K.S.A. 60-1003. In order to comply with K.S.A. 80-2195, however, either this property or the proceeds from its sale must be used for "hospital purposes" directly and immediately benefitting the hospital.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:may