



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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October 14, 1981

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ATTORNEY GENERAL OPINION NO. 81-243

William F. Stahl
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Re: Counties and County Officers -- Hospitals -- Additions to Medical Clinics

Synopsis: Neither K.S.A. 1980 Supp. 19-1815e, as amended by L. 1981, ch. 118, §1, nor K.S.A. 1980 Supp. 19-1878 authorizes the issuance of bonds for the purpose of making additions or enlargements to an existing medical clinic operated in connection with a county hospital. However, pursuant to K.S.A. 19-15,114, a board of county commissioners may issue bonds for the making of an addition or enlargement to an existing medical clinic. Cited herein: K.S.A. 1980 Supp. 10-306, 10-307, 19-101a, K.S.A. 19-101b, K.S.A. 19-15,114, K.S.A. 1980 Supp. 19-15,116, 19-1801, 19-1815e (as amended by L. 1981, ch. 118, §1), 19-1878, K.S.A. 19-18,117.

* * *

Dear Mr. Stahl:

On behalf of the Geary County Board of County Commissioners, you inquire regarding the proposed construction of an addition to a medical clinic erected and operating in connection with the county hospital. The hospital is organized pursuant to K.S.A. 1980 Supp. 19-1801 et seq. The Geary county hospital was constructed in 1966 and the medical clinic was built on the hospital grounds in 1975.

Specifically, you ask whether either K.S.A. 1980 Supp. 19-1815e or K.S.A. 1980 Supp. 19-1878 authorizes the issuance of bonds for the construction of an addition to the medical clinic.

K.S.A. 1980 Supp. 19-1815e, as amended by L. 1981, ch. 118, §1, states in relevant part thus:

"The board of county commissioners of any county establishing and maintaining a hospital under the provisions of K.S.A. 19-1801 to 19-1815, and amendments thereto, is empowered by resolution and order of the board to submit to the qualified electors of the county at a general or special election, the question of the issuance of the bonds of the county for the purpose of paying the cost of constructing enlargements and additions to the hospital or the construction of related long-term care facilities and medical clinics, including the acquiring of necessary land therefor and for the furnishing and equipping of such additions, facilities or clinics. Action by the board of county commissioners as authorized by this section may be compelled by the presentation to the board of a petition signed by not less than 15% of the qualified electors of the county, 1/3 of whom shall not be residents of the city or town in which the hospital is located, asking that bonds be issued for such purposes."

This statute, as now written, authorizes the issuance of bonds in an unlimited amount upon an affirmative vote of the qualified electors of the county. However, by the plain wording of this section the bonds may be issued only for the purposes of "paying the costs of constructing enlargements or additions to the hospital or the construction of related long-term care facilities and medical clinics."

"When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be." Thomas County Taxpayers Ass'n. v. Finney, 223 Kan. 434, Syll. ¶2 (1978). K.S.A. 1980 Supp. 19-1815e, as amended, authorizes the issuance of bonds for enlargements and additions to existing hospitals. It would not permit bonds to be issued to build an entirely new hospital. Likewise, this statute authorizes construction of long-term care facilities and medical clinics. It does not authorize the making of enlargements or additions thereto. Although it may seem odd to permit enlarging of a hospital or the building of more than one medical clinic while not permitting the making of additions to an existing clinic, such is the wisdom of the legislature.

It is to be remembered that the Kansas county hospital statutes are a patchwork of special legislation. In Thomas County Taxpayers Ass'n., supra at 438, the Court noted:

"The legislative history of article 18, chapter 19 of K.S.A. and its forerunners reveals that the article consists of numerous pieces of special legislation, couched in general terms, and adopted from time to time since 1913 to allow or remedy an existing situation in some particular county. As a result we do not have a comprehensive county hospital code that can be uniformly applied and relied upon throughout the state."

As you have noted, K.S.A. 1980 Supp. 19-1878 also concerns medical clinics. It provides in pertinent part:

"Whenever a county hospital has been established in any county under the provisions of article 18 of chapter 19 of the Kansas Statutes Annotated, and acts amendatory thereof and supplemental thereto, and bonds have been issued or a tax levy made by the county as authorized by the election establishing such hospital, the board of county commissioners of said county, upon receiving the written certification of the board of trustees of said hospital that proceeds from the bonds issued or taxes levied plus all other funds available are insufficient to acquire a site or build an addition to a present hospital, or build and equip a hospital of the size and capacity necessary to supply the needs of said county and stating the amount needed to complete the erection and equipping of said hospital, and further for the purpose of purchasing or constructing and equipping and acquiring the necessary ground for a medical clinic or for the purchase or construction and operation of a medical clinic to be used in connection with the operation of said hospital, shall issue additional bonds of said county if said original funds were raised by bond issue or if said original funds were raised by tax levy, make an additional tax levy for such purposes" (Emphasis added.)

As the above-quoted provisions indicate, the proceeds from additional bonds may be used for "an addition to the existing hospital" and for the "purpose of purchasing or constructing and equipping and acquiring the necessary ground for a

medical clinic or for the purchase or construction and operation of a medical clinic." As noted this language authorizes additional bonds or taxes for existing hospitals. It, like K.S.A. 1980 Supp. 19-1815e, as amended, does not authorize bonds or taxes for a new, entirely different, hospital. Indeed, this was the conclusion of the Court in Thomas County Taxpayers Ass'n., supra at 439, to wit:

"A careful study of K.S.A. 19-1878 reveals it was never intended to authorize bonds to build an entirely new hospital on a new site. The statute clearly contemplates a situation where, after the original bond issue (or tax levy), the hospital trustees discover the bonds authorized (or taxes levied) are insufficient 'to acquire a site or build an addition to a present hospital, or build and equip a hospital of the size and capacity necessary to supply the needs of said county.' Any other construction of the statute would completely nullify the various limiting provisions formerly contained in the statute as to the amount authorized to be issued and the provision that the county may, upon proper certification, issue additional bonds to complete the erection and equipping of said hospital." (Emphasis in original.)

And, as with K.S.A. 1980 Supp. 19-1815e, as amended, references to medical clinics are limited to the acquisition, construction and operation of a new medical clinic. Simply stated, this statute does not refer to additions and enlargements of medical clinics. Hence, we are unable to read such references into the wording selected by the legislature.

There is yet another statute which authorizes the making of additions to medical clinics, i.e., K.S.A. 19-18,117. This section, however, does not authorize either the issuance of bonds or the levy of a tax for such purpose. (See Kan. Att'y Gen. Op. No. 79-47 for a thorough discussion of the limited utility of the statute.) In addition, general authority may be found for the making of an addition to the medical clinic under the provisions of the county public buildings law, K.S.A. 19-15,114 et seq. Although the Kansas Supreme Court has held that the specific hospital statutes govern over the general county public buildings statute where there is a repugnancy [Seltman v. Board of County Commissioners, 212 Kan. 805 (1973)], we find no such repugnancy here, since the county hospital law does not provide for the issuance of bonds for the purpose of making enlargements to medical clinics. In sum, the hospital law authorizes the expenditure of funds for

additions to a medical clinic, but does not provide for the issuance of bonds for such purpose. The county public buildings law authorizes the issuance of bonds for improving public buildings of which a county medical clinic is one. Hence, we do not have a situation where a specific statute concerning the issuance of bonds for making additions to medical clinics would govern over the general county public buildings law.

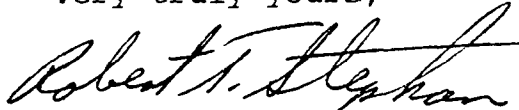
We note that bonds issued pursuant to K.S.A. 19-15,114 et seq. may be subject to statutes relating to bonded debt limitations. For example, although the limitations on bonded indebtedness contained in K.S.A. 1980 Supp. 10-306 do not apply to bonds issued pursuant to Article 18 of Chapter 19 (K.S.A. 1980 Supp. 10-307), general obligation bonds for county public building purposes, issued pursuant to the K.S.A. 19-15,114 et seq., are not entitled to this exemption and will be subject to such limitations. In addition, although K.S.A. 1980 Supp. 10-306 is non-uniform in application, it would not be subject to charter resolution exempting the county from the limitation. See K.S.A. 1980 Supp. 19-101a, fourth. Likewise, the county public buildings laws, K.S.A. 19-15,114 et seq., apply uniformly and, therefore, are not subject to county charter resolution.

We note for benefit of the county that K.S.A. 1980 Supp. 19-101a, the county "home rule" statute, grants significant powers to the county to manage its local affairs and business. In Kansas Attorney General Opinion Nos. 79-47 and 81-37 this office concluded that the operation of a county hospital is a matter of county business and that the Kansas county hospital laws are non-uniform in application, hence, beyond the limitations of the first exception to home rule powers contained in 19-101a. In addition, we concluded in Attorney General Opinion No. 79-47 that the issuance of bonds for hospital purposes [which under statute require an election] is not a matter pertaining to elections within the meaning of the seventh exception of K.S.A. 1980 Supp. 19-101a. Id. at 14. However, in our opinion, a county need not exempt itself by charter resolution from the terms of the county hospital laws, specifically K.S.A. 1980 Supp. 19-1815e and 19-1878 and K.S.A. 19-18,117, to provide for the issuance of bonds for the making of additions to a medical clinic. Instead, the act to be accomplished, i.e., issuing county bonds to make additions to an existing medical clinic under the authority of K.S.A. 19-15,114 et seq., is not contrary to any of these acts of the legislature but merely supplemental to them. Hence, in order to issue bonds pursuant to K.S.A. 19-15,114 a charter resolution prescribed in K.S.A. 19-101b is unnecessary and an ordinary resolution of the county will suffice.

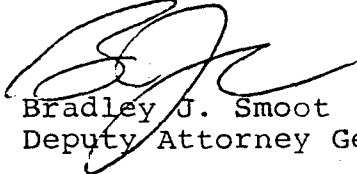
William F. Stahl
Page Six

Therefore, in our opinion, neither K.S.A. 1980 Supp. 19-1815e, as amended by L. 1981, ch. 118, §1, nor K.S.A. 1980 Supp. 19-1878 authorizes the issuance of bonds for the purpose of making additions or enlargements to an existing medical clinic operated in connection with a county hospital. However, pursuant to K.S.A. 19-15,114 et seq., a board of county commissioners may provide for the issuance of bonds for the making of an addition or enlargement to an existing medical clinic.

Very truly yours,



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Attorney General of Kansas



Bradley J. Smoot
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