



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 6

Mr. Jerry M. Smetana
P. O. Box 205
213 West Mill
Plainville, Kansas 67663

Re: Townships and Township Officers -- Hospitals --
Medical Clinics

Synopsis: A hospital district organized pursuant to K.S.A. 80-2113 et seq., may purchase an existing medical clinic, except that such purchase may not be made with moneys drawn from the hospital's operating fund. The medical clinic may be leased to physicians following its purchase. Cited herein: K.S.A. 1980 Supp. 10-1116b, K.S.A. 79-2925, 80-2113, K.S.A. 1980 Supp. 80-2125 (as amended by L. 1981, ch. 394, §2), 80-2127 and K.S.A. 80-2128.

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Dear Mr. Smetana:

As attorney for the Board of Directors of the Plainville Rural Hospital District Number 1, a hospital district organized pursuant to K.S.A. 80-2113 et seq., you request the opinion of this office regarding the following three questions:

"1. Can a Hospital District purchase a furnished, existing, medical clinic, on contract, payable over three (3) years?

"2. The Plainville Rural Hospital District has a fund which is generally known as the operating fund of the Hospital, which is now comprised primarily of operating funds of the Hospital, and some donations. Can this money be used to purchase the medical clinic?

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"3. Once the medical clinic is purchased, can the Hospital District rent the facilities to doctors for medical purposes?"

Hospital districts organized pursuant to K.S.A. 80-2113 et seq., are expressly authorized by K.S.A. 80-2117 to purchase existing facilities to be used as public hospitals. K.S.A. 80-2113(b) specifically includes medical clinics within the definition of "hospital" for the purposes of this act. Thus, your hospital district may purchase an existing medical clinic pursuant to the above statutory authority.

You also inquire whether such a purchase may be accomplished using a three-year purchase contract. Generally speaking, political subdivisions and taxing districts of the state are prohibited from entering into obligations in excess of the amount of funds actually on hand by the Kansas Cash Basis Law, K.S.A. 10-1101 et seq. However this law sanctions lease-purchase agreements under certain conditions. K.S.A. 1980 Supp. 10-1116b states as follows:

"Nothing in the provisions of K.S.A. 10-1101 et seq. shall prohibit a municipality from entering into (1) an agreement to pay for electric interconnection or transmission facilities or services, (2) a lease agreement, with or without an option to buy, or (3) an installment-purchase agreement, if any of such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source."

Therefore, any installment-purchase agreement entered into by said hospital district in compliance with this statute would be lawful.

Your second question is in regard to the ability of the hospital board to purchase the medical clinic with money from the operating fund of the hospital. We considered this question in Attorney General Opinion No. 80-170. In that opinion we stated that an operating and maintenance fund containing tax moneys levied pursuant to K.S.A. 1980 Supp. 80-2125, as now amended by L. 1981, ch. 394, §2, may not be used for purposes other than operation and maintenance of the hospital. Article 11, Section 5 of the Kansas Constitution commands that "[n]o tax shall be levied except in pursuance of a law, which shall

distinctly state the object of same; to which object only such tax shall be applied." Moreover, the legislature has expressly provided two methods for financing hospital additions. These methods are a tax levy pursuant to K.S.A. 1980 Supp. 80-2127 and a bond issuance pursuant to K.S.A. 80-2128. Both of these statutes condition such financing on approval of the electorate. Such is a clear indication that the legislature intended voter approval before tax moneys should be raised or expended for the purpose of making capital improvements.

An expenditure of the operating fund for the purpose of a hospital addition would also seem to run afoul of the Kansas Budget Law, K.S.A. 79-2925 et seq. Because the hospital district is a taxing subdivision it is subject to the Budget Law. Attorney General Opinion No. 80-170 states as follows with regard to the Budget Law in this situation:

"Simply stated, under the Budget Law, the board of directors shall adopt a budget which establishes 'an appropriation for each fund.' K.S.A. 79-2934. The term 'fund' refers to 'those funds which are authorized by statute to be established.' K.S.A. 79-2925(b), as amended by L. 1980, ch. 89, §4. Once so established, 'the appropriation . . . shall not be used for any other purpose.' K.S.A. 79-2935. Thus, the board's proposed use of money in the fund established under K.S.A. 1979 Supp. 80-2125 for a purpose other than those purposes specified in that statute would be improper." (Emphasis added.)

Thus, even where the money to be spent is generated in part from revenues of the hospital and private donations, as may be the case with most of the operating fund in question, such fund may be used only for its budgeted purpose. Because this money is in the operating fund and budgeted for hospital operation, a different use would be improper during the current fiscal year. However, we know of no law which prohibits hospital revenues and donations, not co-mingled with funds raised by the tax levy authorized by K.S.A. 1980 Supp. 80-2125, as amended, from being dedicated to a capital improvement fund in future fiscal years.

Your third and final question asks whether, once the clinic is purchased, the hospital district may rent the facility to physicians practicing in the area. The answer to this question can be found in K.S.A. 1980 Supp. 80-2123 wherein it is provided that:

If the board of directors of any such hospital district shall deem it advisable and such

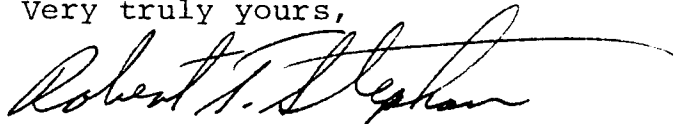
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action shall be approved by the qualified voters at any annual meeting of the hospital district, said board of directors may lease, rent or let the hospital building of such hospital district to any person, corporation or society upon such terms and conditions as said board may by resolution declare
When any such approval of the qualified voters is to be requested at an annual meeting, the notice of such annual meeting shall include a statement to such effect." (Emphasis added.)

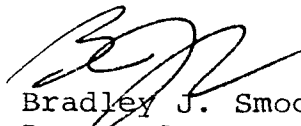
Clearly, then, the hospital district could rent any such clinic to physicians practicing in the area, provided that they first receive approval for such action from the qualified voters of the district.

In summary, we conclude that the hospital district may purchase a clinic under a three-year installment contract which satisfies those budgetary and payment constraints set forth in K.S.A. 1980 Supp. 10-1116b. The hospital district may not, however, apply moneys drawn from its operating fund containing tax moneys towards such purchase. And, lastly, with the approval of the board and the district's qualified voters, the facility, once acquired, may be rented to physicians practicing in the area.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

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