



STATE OF KANSAS

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November 29, 1982

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ATTORNEY GENERAL OPINION NO. 82- 251

John F. McClymont
Attorney at Law
120 South State Street
Norton, Kansas 67654

Re: Counties and County Officers -- Hospitals -- Use
of Donations to Finance Medical Education

Synopsis: A county hospital board of trustees may not use unrestricted gifts, bequests, devises or deeds for medical student loans or scholarships. However, the board of county commissioners may exercise its home rule powers to authorize the use of unrestricted donations to the hospital for the purpose of making medical student loans or scholarships. Cited herein: K.S.A. 19-101a, 19-1801, 19-1812.

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Dear Mr. McClymont:

During the last legislative session you inquired of this office regarding the use of private donations to a county hospital for the purpose of financing medical education loans and scholarships. We delayed responding to your request pending the passage of legislation designed to clarify the Kansas county hospital laws. That legislation, as well as proposed amendments to the city hospital laws, failed to get legislative approval. We further delayed our opinion after testifying before an interim legislative committee concerning your request. It appears that proposed legislation currently being considered by the committee will not address your question of the use of hospital funds for medical student loans and scholarships. Hence, the following represents our opinion of the existing law regarding this issue.

Specifically, you inquire:

"May a County Hospital operate a scholarship program, based upon promises from applying Medical Arts students to return to the immediate area and hospital, upon graduation, where the scholarship funds are derived solely from private gifts to the hospital?"

In Kansas Attorney General Opinion No. 82-32, this office concluded that the laws governing county hospitals do not authorize the hospital board of trustees to expend hospital funds to pay for a student's medical education as a recruiting method. We noted, however, that the Board of County Commissioners could, in the exercise of county home rule powers (K.S.A. 19-101a) authorize such expenditures. We reached a similar conclusion regarding such scholarship programs proposed by township hospitals operating pursuant to K.S.A. 80-21,101 et seq., except that townships lacked the home rule option.

The issue here, unlike those above, concerns the use of gifts to the hospital, rather than the use of tax moneys or other revenues. K.S.A. 19-1812 provides, in pertinent part:

"Any person or persons, firm, organization, corporation or society desiring to make donation of money, personal property or real estate for the benefit of such hospital, shall have the right to vest title of the money or real estate so donated in said county to be controlled, when accepted, by the board of trustees according to the terms of the deed, gift, devise or bequest of such property."

Three observations are to be made regarding the above language: First, title to the donation (gift, bequest, devise or deed) is to be vested in the county. Second, control of the donation belongs to the hospital board of trustees. And third, the donation is to be administered "according to the terms" of the donation.

As noted in the previously discussed opinions, a governmental agency, such as a county hospital, "has only those powers expressly conferred by law and those necessary to make effective the powers expressly conferred. See Murray v. State Board of Regents, 194 Kan. 686 (1965), and Kansas Power Co. v. Fairbanks, Morse & Co., 142 Kan. 109 (1935)." Kan. Att'y Gen. Op. No. 82-32. Since the power to make loans to medical students is not expressly conferred or necessarily implied in the enabling laws for county hospitals, no such power may

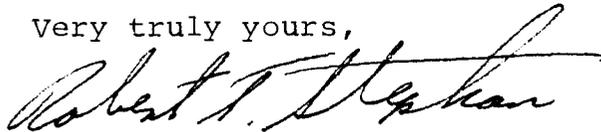
be exercised even when the source of funding for such activity is private and places no limitations on the use of such funds. Hence, the remaining issue is whether the authority to administer the private donations within the terms of the donations referred to in K.S.A. 19-1812, implies an additional grant of authority to the hospital beyond those powers expressed or otherwise implied. We think it clearly beyond the intent of the statutory language to suggest that the desires of a private person may be relied upon to expand the grant of power expressed by the legislature.

Even though the board is authorized to accept donations, the board's agreement to perform the conditions attached to any such donation does not operate to confer on the board the authority to perform such conditions. Such authority must derive from law; it does not derive from a contractual relationship. See Attorney General Opinion No. 80-240; Medcalf v. Mitchell, 269 U.S. 385 (1925); Clough v. Hart, 8 Kan. 325 (1871); Miller v. Ottawa County Commissioners, 146 Kan. 481 (1937); 63 Am.Jur.2d Public Officers and Employees, §§8-10 (1972). In our judgment, the hospital board may not accept a donation or gift where the terms thereof require the board to exercise powers not expressly or implicitly conferred by law. Therefore, in the absence of a grant of authority from the county in the exercise of its home rule powers, a county hospital board of trustees is without authority to expend private funds for medical student loans or scholarships.

We would reiterate the conclusion reached in Kansas Attorney General Opinion No. 82-32, that the board of county commissioners may provide, in the exercise of county home rule, for administration of a county hospital medical student loan or scholarship program which could include the use of unrestricted donations given the county.

In summary, a county hospital board of trustees may not use unrestricted gifts, bequests, devises or deeds for medical student loans or scholarships. However, the board of county commissioners may exercise its home rule powers to authorize the use of unrestricted donations to the hospital for the purpose of making medical student loans or scholarships.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General