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January 19, 1984

ATTORNEY GENERAL OPINION NO. 84- 3

Robert E. Davis
Leavenworth County Attorney
County Courthouse
4th & Walnut Street
Leavenworth, Kansas 66048

Re: Public Health--Local Boards of Health--Joint Board;
Use of Funds

Synopsis: The city of Leavenworth and Leavenworth County may withhold budget approval, and may refuse to fund the Leavenworth city-county board of health, where the board's proposed budget does not take into account accumulated funds under control of the board, or where the budget includes expenditures which the city or county determine are not necessary for public health activities of the board.

In the absence of a charter ordinance and a charter resolution providing otherwise, the Leavenworth city-county board of health has exclusive control over the expenditure of all moneys paid to the credit of its treasurer for health, mental health and sanitation purposes.

The Leavenworth city-county board of health may take and hold property in accordance with its statutory powers, and incidental to its statutory purposes. Accordingly, the board has authority to use funds under its control to acquire a building to house its operations. Cited herein: K.S.A. 12-1663, 65-201, 65-205, 65-206.

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Dear Mr. Davis:

You inquire whether the Leavenworth city-county board of health has authority to use certain funds to purchase or build a facility to house its operations, and also pose other questions (enumerated below) relating to funding of the board by the city of Leavenworth and Leavenworth County. You advise that Leavenworth County and the city of Leavenworth established the joint board of health under the provisions of K.S.A. 65-201 et seq., and have provided a copy of a "Joint Board of Health Resolution" whereby the board was created. You indicate that financial statements of the joint board of health for the year ending December 31, 1982, showed a "building fund" in the amount of \$113,770.31, and that, although the source of said fund has not been identified, it appears that moneys in the fund were generated through reimbursement from Medicare and Medicaid, through state reimbursement from Blue Cross and Blue Shield payments, and through private payments for services performed through the local city/county health department's operation of the home health agency. It is the existence of this fund which prompts your request for an opinion, and your specific questions, and our responses thereto, are set forth below.

"(1) May Leavenworth County deny a joint City/County Health Department reasonable budgetary request for funding under the provisions of K.S.A. 65-203 [sic], based upon the fact that such local City/County Health Department has accumulated funds through other sources?"

In Kansas Attorney General Opinion No. 79-156, we opined, in part, that "the governing bodies of cities and counties under 300,000 population which voluntarily create joint boards of health may not review the actions of such boards absent the reservation of such authority in the agreements or ordinances creating the board." The agreement creating the Leavenworth city-county board of health reserves authority to approve the board's budget as follows:

"The joint City-County Board of Health shall prepare a proposed budget estimating the amount of funds necessary to carry on public health activities, which budget shall be submitted to the governing bodies of the city and county for approval. When the proposed budget is approved by the governing bodies of the city and county, the funds necessary to meet the necessary expenditures shall be provided for in such proportions as shall be fixed by agreement between the governing bodies after taking into consideration the population of each and other

factors which would necessarily increase or diminish the costs of administration in the absence of any agreement to establish such joint board of health." (Emphasis added.)

As the above-provision indicates, budget approval by the city of Leavenworth and Leavenworth County is a condition precedent to the obligation of the city and the county to fund the joint board. Such approval may, in our opinion, be withheld where the proposed budget does not take into account accumulated funds under the control of the joint board, or where the budget includes expenditures which the city or county determine are not necessary for public health activities of the board. Although a refusal to fund the joint board for either of these reasons may exert some influence on the board's expenditure of moneys under its control, the board would, nevertheless, have exclusive control of moneys paid to the credit of its treasurer, as is required (in the absence of charter ordinances of the city and county providing otherwise) by K.S.A. 65-206.

"(2) Since the [accumulated] funds . . . are at least, in part, generated through the use of tax dollars, may the County control the expenditure of such funds or do such funds lie within the exclusive control of the joint City/County Health Department Board?"

Pursuant to the provisions of K.S.A. 65-206 and Section 2(c) of the Joint Board of Health Resolution, the joint board of health has exclusive control over the expenditure of said moneys. However, K.S.A. 65-206 is part of an enactment (L. 1961, ch. 282) which is not uniformly applicable to all cities and counties, and is, therefore, subject to charter ordinance of the city of Leavenworth and charter resolution of Leavenworth County exempting said city and county from any part of said statute. Therefore, in the future the city and the county could, through the exercise of their home rule powers and amendment of the agreement (Joint Resolution) establishing the board, exert control over the expenditure of moneys paid to the credit of the joint board. See Kansas Attorney General Opinion No. 79-156.

"(3) May the funds which have been accumulated . . . be used by the joint City/County Health Department as building fund for the purchase of a building or building of a facility to house its operation?"

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As a general rule, quasi-municipal corporations existing by virtue of statutory authority may take and hold property in accordance with their statutory powers and incidental to their statutory purposes. McQuillin, Municipal Corporations (3d ed.) §28.08. Pursuant to K.S.A. 65-205 and Section 2(b) of the Joint Resolution, the Leavenworth city-county board of health has all powers and duties conferred by law upon municipal or county boards of health. In our judgment, the acquisition of a building "to house its operations" would be incidental to the joint board's statutory purposes, and the board has authority to use funds under its control to acquire such a building.

"(4) If you would conclude that such building fund is not authorized under the applicable statutes or under any other statutes such as the provisions of K.S.A. 12-1663, may the City and County withhold funds and require the local City/County Health Department to expend funds on hand for budget year 1984?"

As stated above, we have concluded that the joint board of health has authority to use funds under its control to acquire a building to house its operations. Such authority emanates from the provisions of K.S.A. 65-205 et seq. and the Joint Resolution establishing the board, and not from K.S.A. 12-1663. The latter statute, which authorizes public agencies to expend federal aid moneys without regard to budget limitations, is not applicable in this instance, since the joint board of health is not a taxing subdivision and is not subject to the budget law. See 5 Opinions of the Attorney General 454 (letter opinion).

In regard to the balance of your question, the city and county may withhold funds under the circumstances set forth in our response to question number one (above), but they may not require the joint board to expend funds which are under the exclusive control of the board.

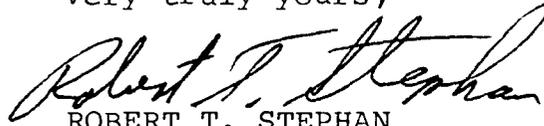
"(5) If it is determined that the local City/County Health Department may accumulate funds outside of its operational budget if such funds are expended on the purchase of a building, would title to that building necessarily vest in Leavenworth County?"

Title would not necessarily vest in Leavenworth County, since the joint board of health may, in our opinion, take and hold

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property in accordance with its statutory powers, and incidental to its statutory purposes. See response to question number 3, above.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm