



STATE OF KANSAS

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November 8, 1984

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ATTORNEY GENERAL OPINION NO. 84-116

Carl F. Lister, Mayor
City of Miltonvale
Miltonvale, Kansas 67466

Re: Kansas Constitution--Corporations--Cities' Powers
of Home Rule

Synopsis: A city without a medical treatment facility may, pursuant to home rule powers granted by Article 12, Section 5 of the Kansas Constitution, adopt an ordinance granting public funds to a private, nonprofit corporation for the construction and operation of a medical clinic to serve the city. Cited herein: Kan. Const., Article 12, §5.

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Dear Mr. Lister:

You request our opinion as to whether the City of Miltonvale may grant public funds to a private, nonprofit corporation for the construction and operation of a medical clinic to serve the city. You indicate that the city is in need of such a clinic since the nearest doctor and medical treatment facility are located 18 miles from the city. We will assume that any tax levy funds included in such a grant could properly be expended by the city for the purpose of promoting the public health.

Initially, it should be noted that we unaware of any statute which would authorize the City of Miltonvale to grant funds to a nonprofit corporation for the purpose described above. However, under Article 12, Section 5 of the Kansas Constitution cities have power to determine their local affairs and government, and do not need legislative authorization to pass a particular

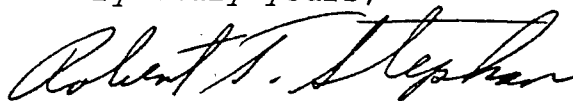
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ordinance. City of Junction City v. Griffin, 227 Kan. 332, 334 (1980). As promotion of the public health is clearly a local affair, the City of Miltonvale may exercise its home rule power to make a grant to a nonprofit corporation under the circumstances described above, provided such action does not run afoul of any constitutional limitations. In this regard, a recent Kansas case provides guidance as to the constitutionality of making such a grant.

In Ulrich v. Board of Thomas County Comm'rs, 234 Kan. 782 (1984), the Kansas Supreme Court considered the constitutionality of a law which authorized the board of trustees of a county hospital to transfer certain hospital assets, including "unencumbered moneys," to a private, nonprofit corporation which would operate a private hospital. The court stated that grants of public funds to a private corporation are valid where a public purpose is shown, and ruled that the operation of a hospital by a private, nonprofit corporation promoted the public health and was for a public purpose. [Id. at 789-790.] Therefore, the court held that the statute authorizing the transfer of hospital assets to a nonprofit corporation was constitutional.

In our judgment, a city ordinance authorizing a grant of public funds to a nonprofit corporation to establish a medical clinic (in a city not adequately served by a clinic or hospital) would be valid under the principles set forth in the Ulrich case. Therefore, in our opinion a city without a medical treatment facility may, pursuant to home rule powers granted by Article 12, Section 5 of the Kansas Constitution, adopt an ordinance granting public funds to a private, nonprofit corporation for the construction and operation of a medical clinic to serve the city.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:sc