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June 27, 1985

ATTORNEY GENERAL OPINION NO. 85- 71

The Honorable August Bogina, Jr., P.E.  
State Senator, Tenth District  
13513 West Ninetieth Place  
Lenexa, Kansas 66215

Re: Public Health -- Hospitals and Other Facilities;  
Licensing, Inspection and Regulation -- Moratorium  
on Construction of General or Special Hospital  
Licensed by Department of Health and Environment

State Departments; Public Officers and Employees --  
Social and Rehabilitation Services -- Licensing of  
Psychiatric Hospitals

Synopsis: The provisions of 1985 House Bill No. 2627 which  
impose a one-year moratorium on the construction of  
any general or special hospital in Kansas apply to  
institutions which are licensed by the Department of  
Health and Environment under K.S.A. 65-425 et seq.  
In that psychiatric hospitals are licensed by the  
Department of Social and Rehabilitation Services  
pursuant to K.S.A. 75-3307b, the moratorium imposed  
by the bill does not apply to such hospitals. Cited  
herein: K.S.A. 65-425; 65-427; 65-429; 65-430;  
75-3307b; 1985 House Bill No. 2627.

\* \* \*

Dear Senator Bogina:

As State Senator for the Tenth District, you request our opinion  
on the scope of a bill enacted by the 1985 Kansas Legislature,  
House Bill No. 2627. That measure, which you indicate is  
generally known as the Hospital Moratorium Act, is effective on

July 1, 1985, and imposes a one-year moratorium on the construction of new general or special hospitals and other actions which increase the licensed bed capacity of existing facilities. You inquire whether the terms of the bill extend to psychiatric hospitals as a type of special hospital.

For purposes of this opinion, the heart of the bill is found in Sections 1 and 2, which state as follows:

"Section 1. As used in this act, the term 'hospital' means a general hospital or a special hospital licensed under K.S.A. 65-425 to 65-441, inclusive, and amendments thereto.

"Sec. 2. The following construction or modifications shall not be commenced prior to July 1, 1986:

"(a) Any erections, building, alteration, reconstruction, modernization, improvement, extension, lease or other acquisition by or on behalf of a hospital that increases the licensed bed capacity of a hospital or relocates hospital beds from one physical facility or site to another; or

"(b) the establishment of a new hospital."

Section 3 sets forth some exceptions to the general prohibitions in Section 2, none of which are relevant here, while Section 4 permits the Secretary of the Department of Health and Environment to grant emergency waivers from the provisions of the act upon certain showings or the occurrence of certain events.

Section 1 of the act references general or special hospitals licensed under K.S.A. 65-425 et seq. These institutions are defined at K.S.A. 65-425 as including:

"(a) 'General hospital' means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than twenty-four (24) hours of every day, to provide diagnosis and treatment for four or more nonrelated patients who have a variety of medical conditions.

"(b) 'Special hospital' means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than twenty-four (24) hours of every day, to provide diagnosis and treatment for four or more nonrelated patients who have specified medical conditions."

Along with other enumerated types of facilities, general and special hospitals are included under the general definition of "medical care facilities" [K.S.A. 5-425(i)] which are licensed by the Kansas Department of Health and Environment pursuant to K.S.A. 65-429. Approval of the department must be obtained before a general or special hospital may operate (K.S.A. 65-427), with the license subject to revocation in the event a failure to comply with the statutes or regulations is determined by the department. K.S.A. 65-430.

Psychiatric hospitals, by way of contrast, are licensed by the Department of Social and Rehabilitation Services. K.S.A. 75-3307b states in pertinent part:

"(a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for the mentally retarded and facilities serving other handicapped persons receiving assistance through the department of social and rehabilitation services is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

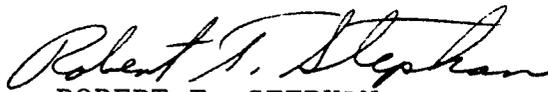
"(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;" (Emphasis added.)

Clearly, the legislature has established a separate system of regulation over psychiatric hospitals, which, along with

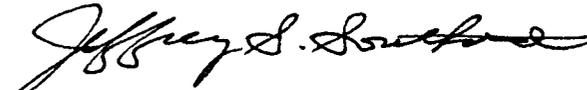
community mental health centers, are under the authority of SRS, rather than Health and Environment. As a result, even though a psychiatric hospital is in the general sense a special hospital which provides treatment for specific medical conditions, under the legal definitions found in K.S.A. 65-425 et seq., and K.S.A. 75-3307b it is not considered as such. Therefore, given the specific limitation contained in Section 1 of the act to only those general and special hospitals licensed by the Department of Health and Environment, it is our opinion that psychiatric hospitals licensed by SRS are not affected by the one-year moratorium provision of 1985 House Bill No. 2627.

We trust the above is responsive to your inquiry. Should you have further questions about this or other statutes, feel free as always to contact us.

Very truly yours,



ROBERT T. STEPHAN  
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