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August 27, 1985

ATTORNEY GENERAL OPINION NO. 85-106

Selby S. Soward
723 Main Street
P.O. Box 549
Goodland, Kansas 67735

Re: Counties and County Officers -- Hospitals and
Related Facilities -- County Hospitals; Powers of
Hospital Board

Synopsis: K.S.A. 1984 Supp. 19-4601 et seq. establishes
procedures whereby a county commission may create a
board of trustees to oversee the management and
control of the county hospital. While the board is
subject to resolutions of the county commission
[K.S.A. 1984 Supp. 19-4610(a)], such control is no
greater than that possessed by the commission over
any other county office, and extends to matters of
county-wide concern such as civil service.
Decisions concerning specific matters in the
hospital, as well as procedural questions such as
by-laws, are vested in the board of trustees by
statute, and cannot be pre-empted by the county
commission. Cited herein: K.S.A. 1984 Supp.
19-4605; 19-4607; 19-4610; 19-4611.

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Dear Mr. Soward:

As attorney for the Northwest Kansas Regional Medical Center,
you request our opinion on a matter involving the authority of
the Sherman County Board of Commissioners over the hospital
board which has been appointed to oversee the affairs of the
medical center. The medical center is a county-owned
facility, and the question has arisen as to the extent of the

commission's power as regarding the rules and regulations of the board itself, as well as decisions of the board concerning the operation of the hospital. Specifically, a proposed resolution has been presented to the commission which would "instruct" the trustees as to certain procedures and duties of the board.

The board of trustees of the medical center was created by the county commission and is governed by the provisions of K.S.A. 1984 Supp. 19-4601 et seq. Comprised of trustees appointed by the commission, the board is responsible for its own internal organization (K.S.A. 1984 Supp. 19-4607) and additionally has the powers to contract and to institute legal actions. K.S.A. 1984 Supp. 19-4611. A specific enumeration of the board's powers is found at K.S.A. 1984 Supp. 19-4610, which states:

"(a) The board shall make and adopt such bylaws and rules and regulations for the management and control of the hospital as it deems necessary so long as the same are not inconsistent with this act, the statutes of the state of Kansas, the resolutions of the county and, if the hospital is located in a city, the ordinances of the city in which the hospital is located. The board shall have the exclusive control of the expenditures of all hospital moneys, except hospital moneys acquired through the issuance of revenue bonds, and all expenditures shall be subject to the approval of a majority of all the members of the board. The board is charged with the supervision, care and custody of all hospital property. The board is authorized to appoint an administrator, to fix the compensation thereof, and to remove such administrator. The board may also require personal or surety bonds of all hospital employees entrusted with the handling of hospital moneys, such bond to be in an amount to be determined and approved by the board.

"(b) The board may establish and fund pension and deferred compensation plans and any other employee benefit plans for

hospital employees and may procure contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies covering one or more risks including, but not limited to, a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance or may provide for a plan of self-insurance for such purposes. The employee's contribution, if any, to the plan and to the premiums for insurance or for the expenses incurred by the board under a plan of self-insurance may be deducted by the employer from the employee's salary when authorized in writing by the employee to do so."
(Emphasis added.)

Finally, K.S.A. 1984 Supp. 19-4605(a) indicates that the management and control of the county hospital is to be vested by the county with the board of trustees, while subsection (h) provides that members of the board are subject to removal in the manner prescribed by law "for other county officers."

Given the above statutes, in our opinion the legislature has clearly set forth a system of administration of county-owned hospitals by boards of trustees which are separate and autonomous from the boards of county commissioners. While it is beyond question that a county may, in the exercise of its home rule authority, create such administrative agencies, departments and authorities as it deems necessary, any agency thus created is merely an agent of the county which acts at its direction and may be dissolved at its pleasure. However, the hospital board is more than such an agency. While the county commission took the initial step in creating the board, it did so in accordance with procedures established by statute, and thus merely triggered the operation of K.S.A. 19-4601 et seq. Thus, the underlying authority for the hospital board is not the county commission, but the legislature, and the county commission cannot limit the ability of the trustees to carry out their statutory duties under the act. See State v. Urban Renewal Agency of Kansas City, 179 Kan. 435, 440 (1956).

Applying the above principles of law to this situation, it is our opinion that the Sherman County Board of Commissioners'

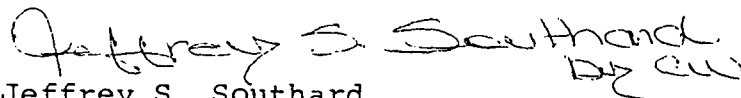
authority over the board of trustees of the medical center is limited in scope. While K.S.A. 1984 Supp. 19-4610(a) requires the board to comply with resolutions of the county commission, this refers to resolutions of a general nature, such as affirmative action, civil service or nepotism, and not to matters specifically involving the operation of the hospital, which are left to the control of the board. While we were not provided with a copy of the proposed resolution, and so cannot comment on whether it would fall within the permitted area of the county's authority, the above standards should be of assistance to you in advising the board and the county commission.

In conclusion, K.S.A. 1984 Supp. 19-4601 et seq. establishes procedures whereby a county commission may create a board of trustees to oversee the management and control of the county hospital. While the board is subject to resolutions of the county commission [K.S.A. 1984 Supp. 19-4610(a)], such control is no greater than that possessed by the commission over any other county office, and extends to matters of county-wide concern such as civil service. Decisions concerning specific matters in the hospital, as well as procedural questions such as by-laws, are vested in the board of trustees by statute, and cannot be pre-empted by the county commission.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw