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October 21, 1985

ATTORNEY GENERAL OPINION NO. 85- 143

The Honorable August Bogina, Jr., P.E.
State Senator, 10th District
Room 123-S, State Capitol
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Public
Institutions and Welfare -- Tax Levy for Certain
Institutions

State Institutions and Agencies; Historical
Property -- State Tax Levies for Buildings -- Tax
Levy for Certain State Institutions

Synopsis: The state property tax imposed under K.S.A. 76-6b04 and deposited in the state institutions building fund is levied for the use and benefit of state institutions which care for certain specified classes of persons, including those who are mentally ill or mentally retarded. Depending on the facts, buildings and facilities which are owned by the state and which are used for the care and treatment of such persons could qualify as state institutions under K.S.A. 76-6b04 and 76-6b05, regardless of whether they were operated directly by the state or by a municipality or corporation acting under contract with, and supervision of, the state. Funds from the state institutions building fund could accordingly be expended for the acquisition, construction, reconstruction, remodeling and maintenance of such buildings and facilities. Cited herein: K.S.A. 76-6b04; 76-6b05; Kan. Const., Art. 7, §6.

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Dear Senator Bogina:

On behalf of the Special Committee on Ways and Means, you request our opinion as to whether the moneys in the state institutions building fund may be appropriated and expended to provide buildings and facilities for use in the case of persons who are mentally ill or retarded. Such care would be in accordance with legislation which would provide for the management and operation of the building or facility by personnel of a municipality or a private corporation under the terms of a contract with the Secretary of Social and Rehabilitation Services. Fee title would be vested in the state, however.

Money in the state institutions building fund is derived from the levy of a property tax by the state legislature pursuant to the authority conferred by Article 7, Section 6 of the Kansas Constitution. This section provides in relevant part:

"The legislature may levy a permanent tax for the creation of a building fund for institutions caring for those who are mentally ill, retarded, visually handicapped, with a handicapping hearing loss, tubercular or for children who are dependent, neglected or delinquent and in need of residential institutional care or treatment and for institutions primarily designed to provide vocational rehabilitation for handicapped persons
... ."

Pursuant to this constitutional authorization, the legislature has levied a 1/2 mill tax which is to be used for, and to benefit,

". . . state institutions caring for persons who are mentally ill, retarded, visually handicapped, with a handicapping hearing loss or tubercular or state institutions caring for children who re deprived, wayward, miscreant, delinquent, children in need of care or juvenile offenders and who are in need of residential care or treatment, or institutions designed primarily to provide vocational rehabilitation for handicapped persons." (Emphasis added.) K.S.A.
76-6b04.

In K.S.A. 76-6b05, the legislature has prescribed:

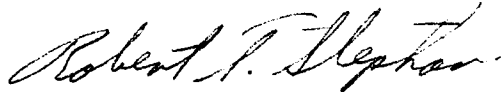
"All moneys received by the state treasurer under K.S.A. 76-6b04, shall be credited to the state institutions building fund, which is hereby created, to be appropriated by the legislature as needed for the construction, reconstruction, equipment and repair of buildings and grounds at institutions specified in K.S.A. 76-6b04." (Emphasis added.)

Accordingly, it appears that if proposed legislation defines the buildings and facilities which are utilized for care and treatment as state institutions, they could be eligible to receive money from the fund for the activities set forth at K.S.A. 76-6b05, above. Of course, the mere act of labeling something does not automatically make it so, and to qualify as a state institution the buildings and facilities would in fact have to be owned by the state and subject to the overall control of the state or one of its agencies. The fact that day-to-day management and operation of the institution would be performed by employees of a municipality such as a city or county or of a private corporation would not in our opinion automatically prevent it from being a state institution. Rather, we believe a court would look to the purposes for which the institution was created, as well as the nature of the entity which owns and ultimately controls its operations. 81A C.J.S. States §144 (1977). Under the facts and circumstances presented to us, buildings and facilities of the type described herein could qualify as state institutions, and so would be eligible to receive and expend moneys from the state institutions building fund. See also Ingleside v. Nation, 83 Kan. 172, 175 (1910) (discussion of distinction between private and state institutions). We further understand that this concept is already in place in other states, such as Tennessee. T.C.A. §33-2-301 et seq.

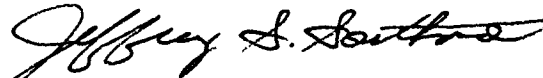
In conclusion, the state property tax imposed under K.S.A. 76-6b04 and deposited in the state institutions building fund is levied for the use and benefit of state institutions which care for certain specified classes of persons, including those who are mentally ill or mentally retarded. Depending on the facts, buildings and facilities which are owned by the state and which are used for the care and treatment of such persons could qualify as state institutions under K.S.A. 76-6b04 and 76-6b05, regardless of whether they were operated directly by the state or by a municipality or corporation acting under contract with, and supervision of, the state. Funds from the

state institutions building fund could accordingly be expended for the acquisition, construction, reconstruction, remodeling and maintenance of such buildings and facilities.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw