



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 18, 1986

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 86- 118

Charlotte Hargis  
Acting Governing Board Chairman  
Johnson County Mental Health Center  
6000 Lamar Avenue, Suite 130  
Mission, Kansas 66202

Re: Counties and County Officers -- Mental Health  
Centers -- Use of County Administrative Structure  
by Mental Health Center Board

Synopsis: K.S.A. 19-4001 provides that community mental health centers established by counties shall be organized, operated and financed according to the provisions of K.S.A. 19-4001 et seq. Given this statutory mandate, all money provided for the purposes of this act must be handled in strict compliance with the provisions of K.S.A. 19-4003. K.S.A. 19-4003(a) specifies that funds collected under the provisions of this act shall be paid over to the treasurer of the governing board of the mental health center. Further, this subsection states that the governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer. Accordingly, the Johnson County Mental Health Center board is prohibited from using the Johnson county administrative structure to manage its funds and perform its payroll and accounts payable functions. Cited herein: K.S.A. 19-4001; K.S.A. 19-4002, as amended by L. 1986, ch. 98, §1; 19-4003.

\*

\*

\*

Dear Ms. Hargis:

As Acting Governing Board Chairman of the Johnson County Mental Health Center, you have requested our opinion on several questions concerning the custody and expenditure of mental health center funds. You inform us that the Johnson County Mental Health Center was established pursuant to K.S.A. 19-4001 et seq., with its board of directors appointed by the board of county commissioners of Johnson county. Further, you state that the mental health center board is considering using the Johnson county administrative structure to manage its funds and perform its payroll and accounts payable functions. Due to the existence of the Board of Directors of the Johnson County Mental Health Center, it is clear that the board of county commissioners of Johnson county has not elected to itself serve as the community mental health governing board for Johnson county pursuant to L. 1986, ch. 98, §3.

In order to respond to your inquiry, it is necessary to examine the statutes which provide for community mental health centers. K.S.A. 19-4001 provides that counties may establish individual or multi-county mental health centers. Such centers are to be organized, financed and operated according to the provisions of K.S.A. 19-4001 et seq. When a county agrees to establish a mental health center, the county, pursuant to K.S.A. 19-4002, establishes a governing board, the duties of which are prescribed by K.S.A. 19-4003.

You first inquire as to whether the Johnson County Mental Health Center may deposit its funds to the custody of the Johnson county treasurer. As mentioned above, K.S.A. 19-4001 provides that community mental health centers "shall be organized, operated, and financed according to the provisions of this act." (Emphasis added.)

Further, K.S.A. 19-4003 states that the duties of the governing boards shall include:

"Election from its members of a chairman, a vice-chairman, a secretary and a treasurer, who shall hold office for a term of one (1) year. Such treasurer shall give bond . . . for the safekeeping and the disbursements of all funds that may come into his or her hands. All

money provided for mental health and/or mental retardation purposes under the provisions of this act shall, when collected, be paid over to the treasurer of said governing board for the purposes of this act." (Emphasis added.)

It is a commonly accepted rule of statutory interpretation that the powers of administrative bodies are limited to those expressly given or necessarily implied from the laws creating the body and enabling its activities. 1 Am.Jur.2d Administrative Law §70 (1962), citing Bennett v. Corp. Comm'n, 157 Kan. 589 (1943). Cf. Wichita Pub. Schools Employees Union v. Smith, 194 Kan. 2 (1964) (school boards). See Attorney General Opinion No. 81-49. Thus, in our opinion, K.S.A. 19-4001 makes it clear that a community mental health center is to be organized, operated and financed only in accordance with the provisions of K.S.A. 19-4001 et seq. In that K.S.A. 19-4003 specifically provides that all money collected under the provisions of this act shall be paid over to the treasurer of the governing board for the purposes of this act, we are unable to find legislative intent that would allow the Johnson County Mental Health Center to deposit its funds to the custody of the Johnson county treasurer.

You next inquire as to whether the mental health center may utilize the county finance department to process and dispense funds. We refer to the provisions of K.S.A. 19-4003, which provide at subsection (a):

"Such governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer under the provisions of this act, and no money shall be paid therefrom, except upon vouchers signed by the treasurer and on order of the governing board." (Emphasis added.)

This subsection clearly vests final and exclusive control over public funds collected for the center in the governing board. Further, the statute specifies that the funds cannot be expended, except upon vouchers signed by the treasurer of the governing board and on order of the governing board. We think allowing the county finance department to process and

disperse funds would be a direct violation of these statutory provisions, and thus conclude that the county finance department may not process and disperse funds collected by the mental health center.

Your next inquiry can be answered by referring to the same portion of K.S.A. 19-4003(a) quoted above. You ask whether mental health center funds (individual warrants) may be dispersed without the express prior approval of each separate disbursement by the mental health center board. The statute provides that:

"no money shall be paid therefrom,  
except upon vouchers signed by the  
treasurer and on order of the governing  
board." (Emphasis added.)

The statute provides on its face that no money shall be paid from the fund unless two things occur; first, all vouchers must be signed by the treasurer, and second, the vouchers must be issued on order of the governing board. Thus, in our judgment, the statute clearly dictates that individual warrants may not be dispersed without the express prior approval of each separate disbursement by the governing board.

Finally, you inquire as to whether the mental health center board may delegate to mental health center staff the authority to sign vouchers authorizing the disbursement of funds. Once again, we refer to the provisions of K.S.A. 19-4003(a), which allow money to be paid from a mental health center fund only "upon vouchers signed by the treasurer . . . ." Thus, based on the plain language of the statute, we conclude a mental health center board may not delegate the authority to sign vouchers authorizing the disbursement of funds to mental health center staff. This function has been specifically reserved by statute to be a duty of the treasurer of the governing board.

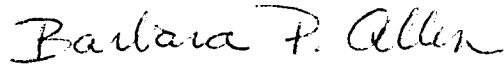
In summary, K.S.A. 19-4001 provides that community mental health centers established by counties shall be organized, operated and financed according to the provisions of K.S.A. 19-4001 et seq. Given this statutory mandate, all money provided for the purposes of this act must be handled in strict compliance with the provisions of K.S.A. 19-4003. K.S.A. 19-4003(a) specifies that funds collected under the

provisions of this act shall be paid over to the treasurer of the governing board of the mental health center. Further, this subsection states that the governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer. Accordingly, the Johnson County Mental Health Center Board is prohibited from using the Johnson county administrative structure to manage its funds and perform its payroll and accounts payable functions.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen  
Assistant Attorney General

RTS:JLM:BPA:crw



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

August 26, 1986

Charlotte Hargis  
Acting Governing Board Chairman  
Johnson County Mental Health Center  
6000 Lamar Avenue, Suite 130  
Mission, Kansas 66202

Dear Ms. Hargis:

This letter is a clarification of Attorney General Opinion No. 86-118, pursuant to requests from both the Johnson County Mental Health Center board and the Johnson county commissioners that we reconsider the conclusion reached in that opinion. As you are aware, the request asked our opinion on several questions relating to whether the mental health center board could use the Johnson county administrative structure to manage its funds and perform its payroll and accounts payable functions. Specifically, you asked our opinion on the following questions:

- "1. May the Mental Health Center deposit its funds to the custody of the County Treasurer?
- "2. May the Mental Health Center utilize the County Finance Department to process and disperse funds?
- "3. May Mental Health Center funds (individual warrants) be dispersed without the express prior approval of each separate disbursement by the Mental Health Center Board?
- "4. May the Mental Health Center Board delegate to Mental Health Center Staff the authority to sign vouchers authorizing the disbursement of funds?"

We concluded that, based on the information we had received from you, such an arrangement would violate the specific statutory guidelines for community mental health centers contained in K.S.A. 19-4001 et seq. While we stand by our original opinion, we think a further clarification of certain issues addressed in the opinion is appropriate to clear up any confusion which still exists.

In 1986, the Kansas legislature added a provision to K.S.A. 19-4002 which allows the Johnson county board of county commissioners to serve as the community mental health governing board for Johnson county, in lieu of appointing a governing board as provided in the statute. As you know, the board of county commissioners did not elect to exercise this option, but instead chose to allow the existing mental health governing board to continue functioning in its present capacity. Thus, it is the governing board, rather than the board of county commissioners, which is required to perform duties for the community mental health center in accordance with the provisions of K.S.A. 19-4003.

As specified in Opinion No. 86-118, K.S.A. 19-4003 states at subsection (a) that the duties of the governing boards shall include:

"Election from its members of a chairman, a vice-chairman, a secretary and a treasurer, who shall hold office for a term of one (1) year. Such treasurer shall give bond . . . for the safekeeping and the disbursements of all funds that may come into his or her hands. All money provided for mental health and/or mental retardation purposes under the provisions of this act shall, when collected, be paid over to the treasurer of said governing board for the purposes of this act." (Emphasis added.)

The statute goes on to provide:

"Such governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer under the provisions of this act, and no money shall be paid therefrom, except upon vouchers signed by the treasurer and on order of the governing board." (Emphasis added.)

This subsection clearly states that all money collected for mental health purposes shall be paid over to the treasurer of the mental health governing board, and that such governing board shall have exclusive control over the expenditures of all such public funds. Therefore, our opinion concluded that the answer to your first question was no, the mental health center was not authorized to deposit its funds to the "custody" of the county treasurer, as this would appear to be a direct violation of plain statutory provisions.

The definition of custody, as applied to property, can be found in Gifis's Law Dictionary. Custody is not ownership, but:

"a keeping, guarding, care, watch, inspection, preservation, or security of a thing, [which] carries with it the idea of the thing being within the immediate personal care and control of the person to whose 'custody' it is subjected." p. 52.  
(Emphasis added.)

As stated in Opinion No. 86-118, K.S.A. 19-4003 clearly vests final and exclusive control over public funds collected for a mental health center in the governing board. Your first question asked whether the mental health center could deposit its funds to the custody of the county treasurer. Based upon your use of the word "custody," we were forced to conclude this arrangement was prohibited by statute, in that giving the Johnson county board of commissioners custody of the money is by definition synonymous with giving them control of the money.

Recent conversations with both yourself and chief legal counsel for the Johnson county commissioners, Mr. Don Jarrett, sheds new light on our interpretation of your question. You now inform us that the mental health center board intends to use the Johnson county administrative structure only as a depository for the public funds, and that the governing board will retain complete control over the expenditures of all money paid to the credit of the treasurer of the governing board. In our opinion, all decision-making functions with regard to the management of mental health center funds and the performance of its payroll and accounts payable functions must by statute be performed by the governing board of the mental health center. However, the governing board may use the county administrative structure to carry out purely ministerial functions, just as it may hire a



private service bureau to carry out the technical performance of its monetary authorizations.

Your second question asks whether the mental health center can utilize the county finance department to process and disperse funds. Opinion No. 86-118 concluded this was not a legal option available to the governing board, as the statute specifies that mental health center funds cannot be expended, except upon vouchers signed by the treasurer of the governing board and on order of the governing board. Based on these statutory provisions, and previously enunciated considerations noted above, we find this result to be correct as a general rule. However, in our judgment, if the funds are processed and dispersed by the county finance department in strict compliance with K.S.A. 19-4003, so that the county retains exclusive control over the funds (i.e. only upon vouchers signed by the treasurer of the governing board and upon order of the governing board), it is our opinion that the county finance department could be utilized to carry out these purely ministerial functions.

After reconsidering your questions number (3) and (4), we feel that answers provided in Opinion No. 86-118 need no further explanation. We hope this letter will clear up any confusion which has arisen as a result of the conclusion reached in that opinion, and apologize for any inconvenience it has caused you.

Very truly yours,

ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

Barbara P. Allen  
Assistant Attorney General

RTS:JLM:BPA:crw

cc: Don Jarrett