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ATTORNEY GENERAL OPINION NO. 87- 109

James R. Kepple
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112 West Main
P.O. Box 6
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Re: Counties and County Officers -- Hospitals and
Related Facilities -- County Hospital Board; Access
to Physician Personnel Files

Laws, Journals and Public Information -- Records
Open to Public -- County Hospital Board; Physician
Personnel Files

Synopsis: A personnel file of a staff physician or other
employee of a county hospital is a public record
which may be closed to the public. Hospital board
members, however, have a right of access to such
records in order to carry out their statutory
duties of management and control of the hospital.
Cited herein: K.S.A. 1986 Supp. 19-4601;
19-4605; 19-4607; 19-4610; K.S.A. 45-215; 45-216;
45-217; 45-221, as amended by L. 1987, ch. 176,
§ 4; 65-431.

Dear Mr. Kepple:

As attorney for the hospital board of Ness County Hospital
District No. 2, you request our opinion concerning the Kansas
Open Records Act (KORA), K.S.A. 45-215 et seq.
Specifically, you ask two questions:

1. Is a record containing a physician's application,
qualifications, restrictions on clinical privileges, and other
performance-related information a public record under the
KORA?

2. If the record is not a public record, does a board member have a right of access to this information in his or her capacity as a board member?

The KORA provides that all records made, maintained, kept by, or in the possession of a public agency are public records subject to disclosure, unless otherwise provided. K.S.A. 45-216; 45-217(f) (1). A county hospital is a "public agency" as it is a taxing subdivision of the state. K.S.A. 45-217(e) (1). Therefore, a file maintained by the hospital containing a staff physician's application and other information is a public record. Not all public records, however, are required to be open for public inspection. K.S.A. 45-221(a) (1), as amended, provides that records, the disclosure of which is prohibited or restricted by law, are not subject to disclosure under the KORA. In addition, K.S.A. 45-221(a) (2)-(35) lists records which the public agency has discretion to keep confidential.

Our research has not revealed any statute which requires the documents in question to be kept confidential. However, K.S.A. 45-221(a) provides:

"Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

. . . .

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such."

A personnel file of a staff physician employed by a county hospital is a public record which may be closed to the public. The decision by the public agency whether to maintain confidentiality involves a weighing of the public's right to knowledge concerning a public employee and the individual employee's privacy rights. If the custodian of the records decides to close physician personnel files to the public, the question arises whether hospital board members are entitled to examine these records.

County hospitals are governed by the statutes located at K.S.A. 1986 Supp. 19-4601 et seq. The county commission is to "provide for the management and control of any existing

county hospital or any county hospital established under this act by a board." K.S.A. 1986 Supp. 19-4605(a). "Board" is defined in K.S.A. 1986 Supp. 19-4601(a) as "a hospital board which is selected in accordance with the provisions of this act and which is vested with the management and control of a county hospital." The hospital board must annually prepare a budget and file with the county commissioners "a written report of the management of the hospital." K.S.A. 1986 Supp. 19-4607(c). The powers of the hospital board are listed in K.S.A. 1986 Supp. 19-4610, which include the following:

"(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. . . . 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. . . ."
(Emphasis added).

K.S.A. 65-431, which concerns all licensed hospitals, provides in pertinent part:

"Boards of trustees or directors of facilities licensed pursuant to the provisions of this act shall have the right to select the professional staff members of such facilities and to select and employ interns, nurses and other personnel, and no rules and regulations or standards of the licensing agency shall be valid which, if enforced, would interfere in such selection or employment."

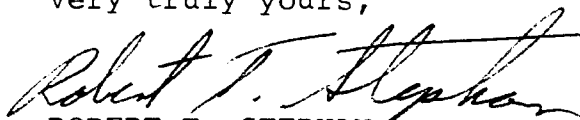
In Foote v. Community Hospital of Beloit, 195 Kan. 385, 387 (1965), the Kansas Supreme Court commented on the above statute as follows: "The board of directors of a hospital is thus given plenary power to select its

professional staff and the state has expressed a policy not to interfere with that selection."

Under Kansas law a county hospital is under the management and control of the hospital board. The hospital board, then, has the ultimate responsibility for running the hospital. The hospital administrator may make recommendations concerning employment and staff privileges, but the Board has the final decision in these matters. In making initial decisions concerning staff physicians and privileges, the Board has access to and relies on the employment application and other information concerning the applicant's credentials. Therefore, in order to fulfill its statutory obligations and responsibilities, we must conclude that a hospital board has the right to examine the personnel file of a staff physician or other employee to ensure the continuing proper management and operation of the hospital. The request to the custodian for access to such records should come as a request from members of the Board acting in their official capacity. We also add that in making requests for hospital records, Board members should respect the day-to-day functioning of the hospital.

In summary, a personnel file of a staff physician or other employee of a county hospital is a public record which may be closed to the public. Hospital board members, however, have a right of access to such records in order to carry out their statutory duties of management and control of the hospital.

Very truly yours,



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