



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 88- 42

Charles A. Peckham
Rawlins County Attorney
308 Main
Atwood, Kansas 67730

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

Synopsis: Tax revenues, properly levied and budgeted for the county hospital pursuant to K.S.A. 1987 Supp. 19-4606, and other hospital moneys expended under the authorization of K.S.A. 1987 Supp. 19-4608, are subject to the control vested in the hospital board pursuant to K.S.A. 1987 Supp. 19-4601 et seq. Under K.S.A. 1987 Supp. 19-4611, the hospital board has the authority to expend moneys to compensate independently contracting doctors for providing emergency room coverage at the county hospital. Factual questions concerning the advisability of the contract or the adequacy of consideration are properly addressed to the hospital board or a court of law. Cited herein: K.S.A. 1987 Supp. 19-4601; 19-4606, 19-4608, 19-4610; and 19-4611.

* * *

Dear Mr. Peckham:

As Rawlins County Attorney and acting at the request of the Rawlins County Board of County Commissioners, you ask our opinion as to whether a county hospital, acting as a non-profit corporation subsidized by a mill levy, may legally pay three local doctors for providing emergency room coverage on weekends and at night. We understand that these doctors

would be required to see everyone who comes into the county hospital for emergency care during these hours and that, in addition to the payment received from the county hospital board, these doctors would be allowed to charge and retain the normal emergency room fee. You inform us that this question arises because of the fact that previously these doctors required no additional compensation beyond that which was paid by the patients and because of concerns that this payment provides the doctors with assistance in paying malpractice insurance premiums.

K.S.A. 1987 Supp. 19-4601 et seq. provides for the creation and management of county hospitals and related facilities. Under K.S.A. 1987 Supp. 19-4606 a tax may be levied "for the purpose of operating, maintaining, equipping and improving any hospital managed and controlled under the provisions of this act. . . ." (Emphasis added). As set forth in K.S.A. 1987 Supp. 19-4610, and as discussed at length in Attorney General Opinions No. 88-31, 87-109, 87-187 and 85-106, decisions concerning specific hospital matters are vested in the hospital board. Thus, once the tax revenues have been properly assessed, collected and distributed, it is no longer the province or responsibility of the board of county commissioners to direct the expenditure of these tax moneys. The hospital board has that responsibility and must handle financial affairs as statutorily mandated under K.S.A. 1987 Supp. 19-4601 et seq. in furtherance of public purposes.

K.S.A. 1987 Supp. 19-4601(d) defines hospital moneys to include those acquired through the levy of taxes. All hospital moneys are considered public moneys under K.S.A. 1987 Supp. 19-4608. Ulrich v. Board of County Comm'rs of Thomas County, 234 Kan. 782 (1984) discusses the rule that expenditures of public moneys must be for a legitimate public purpose. Attorney General Opinions No. 87-164 and 80-19 also discuss the public purpose doctrine and reiterate the general rule that public moneys cannot be used merely to aid a private entity or enterprise, however laudable its purpose or useful its encouragement. Whether a particular expenditure serves a public or private purpose is often a question of fact properly decided by the authority given the discretion to make that decision or a court of law. However, statutory authority to make certain expenditures creates a presumption that those expenditures serve a valid statutorily approved public purpose.

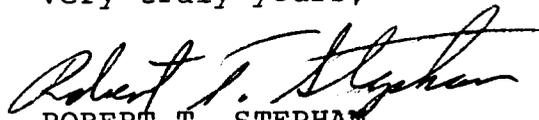
Under K.S.A. 1987 Supp. 19-4610, the hospital board is given the authority to manage and control the business and expenditures of the hospital. K.S.A. 1987 Supp. 19-4611 discusses many agreements properly entered into by the

hospital board and specifically allows the board to expend funds "deemed necessary for the recruitment of staff. . . ." K.S.A. 1987 Supp. 19-4611(f) authorizes loans and scholarships in order to recruit staff, and thus legislatively nullifies some of the conclusions reached in Attorney General Opinions No. 80-200, 82-31 and 82-32, all of which were written prior to the adoption of this act. Further, these statutory provisions indicate that such expenditures serve a valid public purpose. Thus, the issue presented can be stated as whether the county hospital board, acting pursuant to its inherent authority granted under K.S.A. 1987 Supp. 19-4601 et seq. to manage and control the hospital, or pursuant to specific authority granted under K.S.A. 1987 Supp. 19-4611(f) to expend funds for recruitment of staff, may enter into this contract.

The contract in question provides that the doctors receive \$20,000 each and are compensated as independent contractors and in return the doctors agree to provide emergency room coverage. Providing staff in order to insure emergency room coverage is not inconsistent with K.S.A. 1987 Supp. 19-4601 et seq. and arguably is a valid expenditure of public funds for a public use. The use to which the doctors put this compensation is not discussed in the contract, and, as with all compensation paid by governmental entities to independent contractors, unless there is an agreement to the contrary these moneys can be expended by the independent contractor in any legal manner.

It is therefore our opinion that hospital moneys independently controlled by the hospital board pursuant to K.S.A. 1987 Supp. 19-4601 et seq. may be used to provide compensation to doctors for providing emergency room coverage at the county hospital. Factual questions concerning the advisability of the agreement or the adequacy of consideration are properly addressed to the authorities vested with the discretion to make the decisions or a court of law.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
Assistant Attorney General