



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 61

Otis W. Morrow
City Attorney
P.O. Box 1146
Arkansas City, KS 67005

Re: Laws, Journals and Public Information -- Records
Open to Public -- Names and Salaries of Municipal
Hospital Employees

Synopsis: The Arkansas City Memorial Hospital is a "public
agency" under the Kansas Open Records Act as it is
an instrumentality of a political subdivision of
the state. The KORA requires that the names of
employees of public agencies and their salaries be
disclosed to the public upon request. Cited
herein: K.S.A. 14-601c; 14-602; 14-609; 45-215;
45-216; 45-217; 45-221.

* * *

Dear Mr. Morrow:

As the attorney for the city of Arkansas City, you request our
opinion concerning the Kansas open records act, K.S.A. 45-215
et seq. You state that a local newspaper has requested
the Arkansas City Memorial Hospital to make available a list
of the twenty-five highest paid hospital employees. We assume
the request also asks for the salaries of these employees.

The Kansas open records act (KORA) declares it to be the
policy of this state that public records of public agencies
"shall be open for inspection by any person. . . ." K.S.A.
45-216(a). The KORA further provides that the act is to be
liberally construed and applied to promote the public policy
of openness. K.S.A. 45-216(a); Harris Enterprises, Inc. v.
Moore, 241 Kan. 59, 63 (1987). "Public agency" is defined
in the KORA as follows:

"'Public agency' means the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivision of the state." K.S.A. 45-217(e) (1).

We understand that the Arkansas City Memorial Hospital was established pursuant to K.S.A. 14-601c et seq. K.S.A. 14-602 provides that the governing body of any city of the second class may levy a property tax to acquire a site and build a hospital in the city. You inform us that Arkansas City has never levied a tax for the city hospital. Therefore, you ask whether the hospital must comply with the records request "since all of the Hospital expenses are paid from Hospital revenues and not from public tax dollars."

The definition of public agency in K.S.A. 45-217(e) (1) does not require a body to receive, expend, or be supported by public funds to be a public entity subject to the KORA. Rather, the public funding language is in the alternative. A body is a public agency if it meets one of two tests: (1) the body is the state, a political or taxing subdivision of the state, or an instrumentality of one of these entities, or (2) the body receives or expends and is supported in whole or in part by public funds. Since Arkansas City Memorial Hospital is not supported by public funds, the question is whether the hospital is an instrumentality of a political or taxing subdivision. See Frederickson, Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act, 33 U. Kan. L. Rev. 205, 206 (1985).

The Kansas legislature has not defined the term "instrumentality" by statute, nor have the Kansas courts judicially defined the term. In Attorney General Opinion No. 77-377 it was noted that the word is derived from "instrument" which is defined in Webster's New Third International Dictionary as "a means whereby something is achieved, performed, or furthered. . . ."

A case which is analogous to the issue before us is Mallory v. White, 8 F. Supp. 989 (1934). The question in that case was whether the Boston City Hospital was an instrumentality of the city of Boston. The issue was important for tax purposes, as the federal government does not tax instrumentalities of a state government. The court held that the city hospital was an "instrumentality" since it was established and maintained

"for the reception of persons who by misfortune or poverty may require relief during temporary sickness." 8 F. Supp. at 992. The court based its decision on application of the test set out in Bolster v. City of Lawrence, 114 N.E. 722, 724 (1917):

"The underlying test is whether the act is for the common good of all without the element of special corporate benefit or pecuniary profit."

See Gaither v. Fulton-DeKalb Hosp. Auth., 240 S.E. 2d 560, 562 (1977) (The court held that a local hospital authority was an instrumentality of the state.)

In the present situation, the city hospital was established pursuant to K.S.A. 14-601c et seq.:

"Every hospital established under this act shall be for the benefit of all the inhabitants of said city, and of any person falling sick or being injured or maimed within its limits, but every such inhabitant or person who is not a pauper shall pay to the board of hospital trustees, or such officer as it shall designate for such city hospital, a reasonable compensation. . . ." K.S.A. 14-609.

City hospitals organized under these laws must be established by a nonprofit corporation or a charitable or religious organization. K.S.A. 14-601c. It appears that such hospitals are for the "common good of all" and are "without the element of special corporate benefit or pecuniary profit." Therefore, under the Mallory analysis, it is our opinion that the Arkansas City Memorial Hospital is an instrumentality of a political subdivision of the state subject to the provisions of the open records law.

The question now is whether a list of hospital employees and their salaries is subject to disclosure. A "public record" is "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." K.S.A. 45-217(f)(1). Public records do not include

"records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds or

records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state." K.S.A. 45-217(f)(2).

According to these definitions, a list of hospital employees and their salaries is a public record.

Not all public records, however, are required to be open for public inspection. K.S.A. 1987 Supp. 45-221(a)(1) 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. 1987 Supp. 45-221(a)(2)-(36) lists records which a public agency has discretion to keep confidential. An exception applicable to the present situation provides that a public agency is not required to disclose

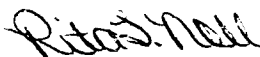
"[p]ersonnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, position, salaries and lengths of service of officers and employees of public agencies once they are employed as such." K.S.A. 1987 Supp. 45-221(a)(4).
(Emphasis added).

The hospital is not required to release employee personnel files, performance ratings, and other such documents. However, the KORA clearly requires that the names of employees of public agencies and their salaries must be disclosed to the public upon request.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General