



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

June 24, 1988

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

ATTORNEY GENERAL OPINION NO. 88- 84

Mr. Theodore J. Nichols  
Harper County Attorney  
110 North Jennings Avenue  
P.O. Box 346  
Anthony, Kansas 67003-0346

Re: Counties and County Officers -- Hospitals and  
Related Facilities -- County Hospitals, Procedure  
to Establish; Dissolution of Certain Districts

Synopsis: K.S.A. 1987 Supp. 19-4603 sets forth procedures  
whereby qualified electors of a county may  
establish a county hospital. The statute provides  
that qualified county voters residing in an  
existing hospital district may vote on whether or  
not to dissolve or detach from the hospital  
district in order to become part of a county  
hospital. The prior or continued existence of one  
or more hospital districts within the county does  
not automatically defeat the organization of a  
county hospital. Cited herein: K.S.A. 1987  
Supp. 19-4603; 19-4604; K.S.A. 80-2501 to 80-2533.

\* \* \*

Dear Mr. Nichols:

As Harper County Attorney you request our opinion on the  
correct procedures connected with establishing a county  
hospital in a county that already has three existing hospital  
districts. Specifically you ask:

"1. May a county hospital be organized by  
a majority of the voters in the county,  
notwithstanding the prior existence of one

or more district hospitals within the county? and

"2. If the answer to question number 1, above, is yes, may a minority of the voters defeat the purpose of a county hospital by 'opting out' of the proposal?"

K.S.A. 1987 Supp. 19-4603 sets forth the procedure for establishment of a county hospital and states in pertinent part:

"In a county having within its boundaries territory of an existing hospital district or districts operating and maintaining a hospital under K.S.A. 80-2501 to 80-2533, inclusive, and amendments thereto, the provisions of this paragraph shall apply in establishing and maintaining a county hospital. If the entire territory of the hospital district is located within the boundary of the county and if a majority of the qualified electors who reside within the boundary of the hospital district vote to dissolve the district and to be a part of the county hospital should it be established within a period of two years from the date of such election, the hospital district shall be dissolved on the second December 31 following the date of the order of the board of county commissioners establishing the county hospital. If part of the territory of the hospital district is located within the boundary of the county and part is not and if a majority of the qualified electors who reside within that part of the hospital district which is located within the county vote to detach from the hospital district and to be a part of the county hospital should it be established within a period of two years from the date of such election, the part of the hospital district located within such county shall be detached from the remainder of the hospital district on the second December 31 following the date of the order of the board of county commissioners establishing the county hospital. An election under this section shall be called by the board of county commissioners and shall be

noticed and governed in all respects and the results declared in accordance with the provisions of K.S.A. 10-120 and amendments thereto. The territory of any hospital district dissolved or any territory detached from a hospital district under this paragraph shall be liable for payment of outstanding bonds of indebtedness of the district hospital or hospitals as may have been issued during the period of time such territory was attached to the district hospital or hospitals. If such hospital district authorized the issuance of bonds at a special election, the election shall be in no way affected by the passage of this act, and the bonds authorized at the election may be legally issued notwithstanding the detachment of any portion of the territory of a hospital district which was included at the date of the bond election." (Emphasis added).

Thus, in answer to your first query, K.S.A. 1987 Supp. 19-4603 clearly contemplates and authorizes the establishment of a county hospital notwithstanding the prior existence of a hospital district or districts within the boundaries of the county.

Your second question presents a more problematic issue. You state that Harper county encompasses three hospital districts which are operated and maintained pursuant to K.S.A. 80-2501 to 80-2533. Two hospital districts contain only Harper county residents while the third hospital district includes part of Kingman county. Furthermore, not all of Harper county is presently within an existing hospital district. K.S.A. 1987 Supp. 19-4603 allows any qualified voter who resides within the county to vote on the establishment of a county hospital and any qualified voter who resides within a hospital district and within the county to vote on whether to dissolve or detach from their respective hospital district and thus become part of the county hospital. Your second question asks whether a minority of the voters may "defeat the purpose of a county hospital by 'opting out' of the proposal." By implication this asks what affect a negative vote by residents in a hospital district may have on the formation of a county hospital. The question thus becomes whether a county hospital may be organized in a county that has not dissolved or detached from existing hospital districts.

K.S.A. 1987 Supp. 19-4603 appears to contemplate two procedures: (1) the procedure and election whereby a county hospital is created and (2) the procedures and elections whereby residents of existing hospital districts may chose to dissolve or detach from their respective districts in order "to be part of the county hospital." See also K.S.A. 80-2524. If the voters residing in a hospital district vote against dissolving or detaching from that district, the district ipso facto continues to exist or contain that area. K.S.A. 1987 Supp. 19-4604 discusses the permissible methodology that may be used by an existing hospital district to give its property and facilities to a county hospital. K.S.A. 1987 Supp. 19-4603 permits voters residing in a hospital district to decide whether to "be part of the county hospital." These statutory procedures recognize the possible coexistence of both a county hospital and hospital districts. We find no evidence of legislative intent to allow hospital district voters the sole power to defeat the establishment of a county hospital.

K.S.A. 1987 Supp. 19-4603 sets forth procedures whereby qualified electors of the county may establish a county hospital. The statute also provides that qualified county voters in existing hospital districts in the county may decide by election whether or not to dissolve or detach from the hospital district to become part of the county hospital. Thus, in our opinion, voters in an existing hospital district may vote to remain attached to that district without defeating an affirmative vote by all the qualified electors of the county who have approved establishment of a county hospital.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls  
Assistant Attorney General

RTS:JLM:TMN:bas