



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 13

Mr. Jack Dalton
Attorney at Law
Southwest Kansas Area Mental Health Center
208 W. Spruce
Dodge City, Kansas 67801-1147

Re: Counties and County Officers -- Mental Health Centers and Services -- Community Mental Health Centers and Community Facilities for the Mentally Retarded; Duties of Board; Financial Assistance to Psychology Students

Synopsis: K.S.A. 19-4001 et seq. do not authorize expenditure of county mental health center funds for the purpose of offering scholarships or other types of financial assistance to psychology students. Cited herein: K.S.A. 19-4001; 19-4003.

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Dear Mr. Dalton:

As legal counsel for the Southwest Kansas Area Mental Health Centers you request our opinion on a proposed expenditure of funds by area mental health centers. Specifically, you ask whether K.S.A. 19-4001 et seq. permit the board of directors to offer scholarships or other types of financial assistance to psychology students in return for their commitment to work for the area mental health center for a minimum specified period of time.

You state that a review of K.S.A. 19-4001 et seq. offers nothing to suggest that such a plan would be prohibited. You further state that since the area mental health center is established pursuant to law, it appears to be a

quasi-municipal corporation. We concur with these statements. However, lack of prohibition does not automatically allow an action by a quasi-municipal corporation.

"Municipal corporations possess and can exercise only such powers as are expressly conferred or those necessarily or fairly implied from or incident to those expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation." 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 227 (1971). When there is a question as to whether a municipal corporation may exercise a particular power, powers granted to municipal corporations will not be extended by implication where the extent of the power is uncertain. McQuillan, Municipal Corporation, § 10.19 (1988). "In this state it has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence." State v. Rural High School Dist. No. 7, Osage County, 171 Kan. 437, 441 (1951). Thus, the issue becomes whether K.S.A. 19-4001 et seq. expressly or by implication confer authority to make expenditures for the proposed purpose.

K.S.A. 19-4001 authorizes the establishment of a community mental health center "which shall be organized, operated, and financed according to the provisions of this act." (Emphasis added). K.S.A. 19-4001 sets forth the variety of services the mental health service center may provide:

"Out-patient and inpatient diagnostic and treatment services; rehabilitation services to individuals returning to the community from an inpatient facility; consultative services to schools, courts, health and welfare agencies, both public and private, and conducting, in collaboration with other agencies when practical, in-service training for students entering the mental health professions, educational programs, information and research."

While the provision of these services in some instances requires employment of trained personnel, the statute does not expressly confer authority to pay for the education of trained personnel or psychology students.

K.S.A. 19-4003 sets forth the duties of a board established pursuant to this act and gives it "exclusive control of moneys paid to the credit of its treasurer under the provisions of this act." Pursuant to K.S.A. 19-4003, the board has the duty of:

"(b) Formulating and establishing policies for the operation of the mental health center and/or facilities for the mentally retarded and employment of personnel if the governing board operates a mental health center or facility for the mentally retarded, or both." (Emphasis added).

Counsel for the area mental health center states that a reasonable interpretation of the provision for "employment of personnel" would include authority to enter an employment contract which provides that part of the compensation to the prospective employee includes educational and other benefits conditioned upon a contract of employment following graduation and certification as a psychologist." We agree that power to provide for employment of personnel allows the board to contract with trained personnel who will provide the authorized services. We respectfully disagree with the conclusion that this power to provide for employment allows the employment contract to provide for compensation to be made for purposes other than the provision of services by employees. County hospitals have been legislatively granted authority to expend funds in order to recruit staff. (See Attorney General Opinion No. 88-42; K.S.A. 19-4611(f) "the Board may expend funds as deemed necessary for the recruitment of staff.") Community health centers have not been granted similar statutory authority.

K.S.A. 19-4004 allows the community mental health centers to use funds from the authorized annual tax levy "for mental health services and to pay a portion of the principle and interest on bonds issued under authority of K.S.A. 1979 Supp. 12-774 and amendments thereto." Thus, mental health center funds may be spent only in order to provide services or to repay bond related costs. While money generated by bond issuance ultimately helps the mental health centers to provide services, the legislature nevertheless felt it necessary to specifically authorize an expenditure of mental health center funds not spent for the primary or direct purpose of providing mental health services. The authority to expend funds for repayment of bond issuance costs is expressly conferred and not implied.

In Attorney General Opinions No. 77-296, 77-315 and 80-200 (enclosed), this office discussed the authority of a county hospital to use hospital funds in order to induce physicians to provide services at the county hospital. We affirmed the principle that the expenditure of public funds must be for a public purpose and concluded that, despite the resulting benefits that could inure to a county hospital, absent specific legislative authority, the hospital board did not have the authority to expend hospital funds to make what amounted to gifts or personal loans to doctors. K.S.A. 19-4611(f) was subsequently adopted in 1984, and authorized recruitment of staff by county hospitals.

K.S.A. 19-4001 et seq. authorizes and promotes the provision of certain specified mental health services. The board of directors is authorized to expend funds in order to provide those services. The board may employ personnel necessary for the provision of those services. K.S.A. 19-4001 et seq. give no express authority to provide for the training of personnel, except to allow in-service training of certain students. Expenditure of mental health center tax moneys for the purpose of funding scholarships or financial assistance to psychology students does not provide mental health services. Rather, such expenditures seek to recruit future staff who may later provide such services. While it may be argued that the necessity to hire trained personnel implies the authority to pay for such training, paying for such training is not an essential purpose of the mental health service center. It is therefore our opinion that absent future legislative amendment or clarification, K.S.A. 19-4001 et seq. does not expressly or by implication confer authority to expend mental health center funds for the purpose of offering scholarships or other types of financial assistance to psychology students in return for a commitment of future employment.

Very truly yours,



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