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ATTORNEY GENERAL OPINION NO. 89- 135

Edwin M. Wheeler, Jr.
Marion County Hospital District No. 1
318 East Main
Marion, Kansas 66861

Re: Townships and Township Officers -- Hospitals and
Health Care Facilities; Hospitals -- Lease of
Hospital Property; Lease Purchase Agreement

Synopsis: Hospital district boards are expressly authorized
to acquire real property, and impliedly authorized
to create indebtedness for such acquisition.
Hospital district boards are exempted from the
cash-basis law by statute, and may therefore enter
into lease-purchase agreements which provide for
periodic or installment payments to finance a
construction project. Such agreement must be
reasonable, prudent and economically sound. Cited
herein: K.S.A. 10-1116b; K.S.A. 80-2513, 80-2515,
80-2517.

* * *

Dear Mr. Wheeler:

As attorney for the Marion County Hospital District No. 1,
you have requested our opinion regarding the use of a
lease-purchase agreement as a means of funding physical
improvements to a district facility. You state that the
district was enacted under the laws replaced by K.S.A. 80-2501
et seq.

As a creature of statute, a hospital district possesses only those powers expressly granted or necessarily implied. The powers which may be implied are those which are "necessary for the effectual exercise of the powers conferred and duties imposed." State, ex rel. v. Younkin, 108 Kan. 634, 638 (1921).

A hospital board is specifically authorized to construct and equip a hospital or an addition to a hospital. K.S.A. 80-2515. Funds for construction may be derived from issuing bonds of the hospital's taxing district. K.S.A. 80-2513. Additionally, the board may lease real property for hospital uses. K.S.A. 80-2517(a)(2). The express grant of a power may result in the implied power to create indebtedness for the exercise of that power. See 15 McQuillin, Municipal Corporations, § 39.17 (3d Ed. 1985), citing City of Wichita v. Wyman, 158 Kan. 709 (1944). Based on the express authority to construct or improve a hospital and to lease property, and the implied authority to create indebtedness therefore, it appears that the hospital board may enter into a lease-purchase agreement which provides for periodic installment payments to finance the construction.

One general impediment to lease-purchase agreements is the cash-basis law, K.S.A. 10-1101 et seq. The cash-basis law was enacted in 1933 to control municipal indebtedness by "requiring municipalities to compile a complete, detailed financial statement by a named date, to pay or to refinance their indebtedness in a way prescribed by the act, and to conduct their financial affairs in the future on a cash basis." City of Pittsburg v. Robb, 143 Kan. 1, 2-3 (1936). Lease-purchase agreements are allowed by the cash-basis law if the municipality satisfies the provisions of K.S.A. 10-1116b (leases allowed, with or without option to purchase, and installment purchase under certain circumstances). However, the requirements of the cash-basis law are not applicable to hospital district boards. K.S.A. 80-2517(c); see also 1983 Kansas Report on Legislative Interim Studies, Re: Proposal No. 9 - Hospital Laws 145, 155. Therefore, the prohibitions and exceptions provided in the cash-basis law do not control the agreement proposed. The provisions may be useful guidelines for drafting the agreement, however.

Finally, the proposed agreement may extend beyond the terms of present board members if it is not unreasonable or contrary to public policy. In Verdigris River Drainage Dist. v. State Highway Comm'n, 155 Kan. 323 (1942), the Court stated:

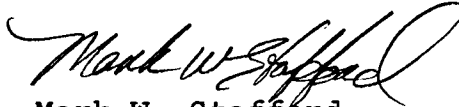
"Where general power is given to an administrative board to manage and control property it has the power to make a contract concerning such property extending beyond the term of the members thereof, if such contract is reasonable and not contrary to public policy. this rule of law is recognized in all transactions with the board of managers involving a contract extending beyond the term of the members of the board, and its validity must of necessity depend upon the nature of the contract and the end to be accomplished. If the contract is reasonable, prudent and economically sound it is not contrary to public policy." 155 Kan. at 398-99 (emphasis added).

In light of the express authority to acquire real property and the implied authority to create indebtedness for the acquisition, and with the exemption of hospital district boards from the cash-basis law, it is our opinion that a hospital district board may finance an improvement project through the use of a lease-purchase agreement.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Mark W. Stafford
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