



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 15

William I. Heydman
Edwards County Attorney
P.O. Box 251
Kinsley, Kansas 67547-0251

Re: Counties and County Officers -- Hospitals and
Related Facilities -- No-Fund Warrants; Payment

Synopsis: The authority to issue no-fund warrants extends to situations wherein a county hospital is operated by another entity pursuant to a lease and contract for management. Any hospital money available for the operation of the hospital which is over and above the amount established by the hospital board's budget as needed for operation and maintenance must be used to pay the warrants. Cited herein: K.S.A. 19-4601; 19-4605; 19-4607; 19-4611; 19-4612; 19-4624; 19-4626.

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Dear Mr. Heydman:

As Edwards County Attorney, you have requested our opinion regarding the use of no-fund warrants to finance the operation and maintenance budget of the county hospital which is leased to a corporation. Specifically, you ask whether K.S.A. 19-4626 applies to a lessee-operator situation, whether excess money in the lessee's budget is to be used to pay for the warrants, and, if so, whether this includes all cash on hand at the fiscal year-end.

The first question is whether the authority to issue no-fund warrants for operation and maintenance budget shortfalls extends to situations involving leased hospitals. The board of county commissioners are required by K.S.A. 19-4605(a) to provide for the management and control of a county hospital by a hospital board. The hospital board is authorized to lease hospital property to another, and to contract for the management of the hospital by another. K.S.A. 19-4611(a),(d). The contract for operation and management notwithstanding, the county commission or the hospital board, if elected and not appointed, may levy such taxes for the hospital's benefit as required by law. K.S.A. 19-4612. Therefore, an agreement which provides that another person or organization will operate the hospital facility does not, by itself, change the nature of the hospital from that of a county hospital. The language of K.S.A. 19-4626(a), which authorizes the issuance of no-fund warrants, applies to county hospitals and makes no exclusion for county hospitals operated by another entity pursuant to a contract.

Your second question concerns the provisions in K.S.A. 19-4626(b) which directs the method of financing the payment of no-fund warrants. That subsection requires an additional tax levy to pay the warrants, and also states in part:

"If there is money available from the operation of the hospital over and above the amount needed for the adopted budget, such money shall be used to pay for such warrants and the interest thereon. . . ."
K.S.A. 19-4626(b).

You ask whether the reference to the adopted budget means that of the hospital board or that of the operator. Pursuant to K.S.A. 19-4607(c), the hospital board prepares a budget showing the amount it deems necessary to operate and maintain the hospital. Hospital moneys are public funds which must be paid to the board treasurer and allocated to separate hospital accounts. It is therefore our opinion that hospital moneys available from the operation of the hospital over and above the amount needed for such operation, as established by the board's budget, must be used to pay for the warrants. The term "hospital moneys" is defined in K.S.A. 19-4601(d) as:

"money acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized

by this act and state or federal aid and from fees and charges for use of and services provided by the hospital."

The payback requirement is not limited to cash on hand at the end of the fiscal year, but extends to hospital moneys which are available for the operation of the hospital.

In conclusion, it is our opinion that the authority to issue no-fund warrants extends to situations wherein a county hospital is operated by another entity pursuant to a lease and contract for management. Any hospital money available for the operation of the hospital which is over and above that amount established by the hospital board's budget as needed for operation and maintenance must be used to pay the warrants.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford
Assistant Attorney General

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