



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 102

Michael W. Ryan
Attorney for Clay County Hospital
P.O. Box 205
509 Court Street
Clay Center, Kansas 67432

John F. Bosch
Clay County Attorney
Courthouse Square
Clay Center, Kansas 67432

Re: Counties and County Officers -- County
Commissioners; Powers and Duties -- Sale of County
Property

Synopsis: While a county hospital board has many powers relating to the supervision, care and custody of hospital property, it does not have the power to sell hospital property. This power is vested in the county which retains title to all hospital real property. The board of county commissioners may sell real property, essentially on behalf of the hospital, and may allow the hospital to retain the proceeds of such a sale. Cited herein: K.S.A. 19-101; K.S.A. 1989 Supp. 19-211; K.S.A. 19-212; 19-4601; 19-4610; 19-4624.

* * *

Dear Mr. Ryan and Mr. Bosch:

As attorneys for Clay county hospital and Clay county, respectively, you request our opinion regarding disposition of the proceeds from the sale of hospital real property. Specifically you ask whether the county may allow a county hospital to retain the proceeds from the sale of hospital real property for future hospital capital needs.

You inform us that in the late 1960's the county hospital built a single story medical clinic with funds specifically given to the hospital for that purpose. You further inform us that this facility has been continuously rented to local physicians who now wish to purchase this clinic. The hospital and the county are in agreement that such a sale would be beneficial to all parties concerned. It is in this context that the issue of disposition of the proceeds of sale has arisen.

We are advised that Clay county hospital operates pursuant to K.S.A. 19-4601 et seq. According to this statutory scheme, title to hospital real property is vested in the county (K.S.A. 19-4624) while the hospital board is charged with the supervision, care and custody of all hospital property, both real and personal (K.S.A. 19-4610). Since title to the property is vested with the county, sale of this property must follow the statutory procedures for sale of county property as set forth in K.S.A. 1989 Supp. 19-211. See Attorney General Opinions No. 79-65. Separate procedures are set forth therein for the sale of county property depending upon whether the value of the property is more or less than \$50,000. K.S.A. 1989 Supp. 19-211, however, does not address disposition of proceeds from such a sale and therefore resolution of the issue must be found elsewhere.

Within K.S.A. 19-101 are found the general powers of a county as a body corporate and politic. K.S.A. 19-101, Third, grants counties the power:

"To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interest of the inhabitants;. . . ."


The powers of the board of county commissioners as set forth in K.S.A. 19-212 provide, in part, the power:

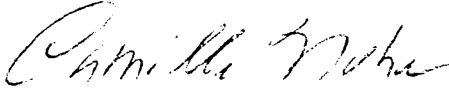
"First. To make such orders concerning the property belonging to the county as they may deem expedient,"

From the foregoing statutory powers it is clear that upon sale of hospital property the board of county commissioners may allow the hospital to retain the proceeds for future capital needs if such board determines such a disposition is "conducive to the interest of the (county's) inhabitants." We note your question was asked in terms of the permissibility of a county allowing a hospital to retain proceeds from the disposition of the sale of real property. We therefore do not reach the issue of whether a county is required to allow a hospital to retain such proceeds.

In conclusion, while a county hospital board has many powers relating to the supervision, care and custody of hospital property, it does not have the power to sell hospital property. This power is vested in the county as the county retains title to all hospital real property. The board of county commissioners may sell real property, essentially on behalf of the hospital, and may allow the hospital to retain the proceeds of such a sale.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Camille Nohe
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