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February 4, 1992

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ATTORNEY GENERAL OPINION NO. 92-17

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John F. McClymont
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Re: Counties and County Officers -- Hospitals and
Related Facilities -- County Hospitals; Recruitment
of Staff; Meaning of Word "Staff"

Synopsis: The meaning of the word "staff" as used in K.S.A.
19-4611(f) includes physicians who are admitted to
membership on the hospital medical staff with
attendant hospital practice privileges. The board
of trustees of a county hospital may expend funds
as deemed necessary for the recruitment of
physicians who are anticipated to become members of
the hospital staff. Such expenditures may include
the purchase of a building and attendant personal
property which would then be leased to such
recruited physicians for their use as a clinic and
office space. The county hospital's purchase of
the property would serve the public purpose of
recruiting physicians to the area. Accordingly,
the county may contribute appropriately budgeted

and allocated county funds to this endeavor. Cited herein: K.S.A. 19-4601; K.S.A. 1991 Supp. 19-4611; 65-431; K.S.A. 79-2929a; 79-2934.

* * *

Dear Mr. Sebelius and Mrs. McClymont:

As the Norton county attorney and the attorney for the Norton county hospital board of trustees, you ask our opinion regarding authority of the board of trustees for Norton county hospital to expend hospital monies to purchase a building and attendant personal property which will then be leased back to physicians for their use as a medical clinic and office. The building is presently owned by three physicians and is used by them as their clinic and office. You inform us that the board plans to expand the existing facility in order to provide space for two additional doctors. You also inform us that the stated purpose of the purchase of the building and personal property is to enhance physician recruitment in the Norton county area, toward the end that obstetrical services may be restored to the Norton county community. You ask whether such a purchase is authorized under applicable Kansas law. In addition you ask whether the county may assist or join in the purchase of the medical clinic by way of home rule power other than bond election.

Norton county hospital was created and organized pursuant to the hospitals and related facilities act, K.S.A. 19-4601 et seq. It is accordingly managed and controlled by a board of trustees who may expend hospital monies only pursuant to statutory authority. K.S.A. 1991 Supp. 19-4611(f) specifies one such authorized purpose:

"The board may expend funds as deemed necessary for the recruitment or retention of staff. . . ."

The issue first presented turns on the meaning of the word "staff" as used in K.S.A. 1991 Supp. 19-4611(f). If "staff" means only salaried hospital employees, board expenditures to provide clinic and office space for physicians in the private practice of medicine would clearly be unauthorized. However, if "staff" also encompasses physicians who have been granted membership on the professional hospital staff with attendant hospital practice privileges, (and assuming the recruited physicians apply for and are granted such practice

privileges), board expenditures to purchase and lease back clinic and office space to such physicians would be well within statutory authority. We opine that the word "staff" as used in K.S.A. 1991 Supp. 19-4611(f) embraces the broader definition.

The word "staff" generally means a group of people assisting a chief, manager, president, or other leader or a specific group of workers or employees. Webster's Second College Edition 1384 (1986). However, in the realm of hospitals and physicians the word has a specialized meaning which is inherent within that relationship. While not defined by Kansas law, the relationship between hospitals and physicians is acknowledged in the statute pertinent to the licensing regulation of hospitals in Kansas, K.S.A. 1991 Supp. 65-431, which provides in part:

"[B]oards of trustees or directors of facilities licensed pursuant to the provisions of this act shall have the right, in accordance with law, to select the professional staff members of such facilities . . . and no rules and regulations or standards of the licensing agency shall be valid which, if enforced, would interfere in such selection or employment. . . ."

The word "staff" has also been used in the context of the hospital/physician relationship to describe that relationship:

"The medical staff is generally an unincorporated association that functions independently from but is accountable to the hospital's governing board. There may be several categories of staff membership, including categories reserved specifically for temporary or probationary members. Although it is ultimately responsible for granting medical staff membership, the governing board generally acts on the recommendations of the medical staff. The standards for selection of medical staff and the distinctions between the categories of medical staff membership must be set out specifically in the staff bylaws." Healthcare Facilities Law, p 5 (A. Dellinger ed. 1991).

See also 41 C.J.S. Hospitals § 16 (1991) and 40 Am.Jur.2d Hospitals and Asylums § 8 (1968).

Foote v. Community Hospital of Beloit, 195 Kan. 385, Syl. 2 (1965), also uses the word "staff" in this same context:

"A by-law of a private hospital which provides for investigation and recommendation by the medical staff of an applicant for membership on the medical staff with final action to be taken on such application by the board of directors of the hospital is reasonable and in harmony with the statutory power of appointment of professional staff members by the board of directors and does not constitute an unlawful delegation of power by such board."

In response to your first question, we opine that the meaning of the word "staff" as used in K.S.A. 1991 Supp. 19-4611(f) must be understood within the context of the hospital/physician relationship and accordingly includes physicians who are admitted to membership on the hospital medical staff with attendant hospital practice privileges. It follows that the board of trustees of a county hospital may expend funds as deemed necessary for the recruitment of physicians who are anticipated to become members of the hospital staff. These expenditures may include the purchase of a building and attendant personal property which would be leased to such recruited staff physicians for their use as a clinic and office space. Statutory authority to enter such a lease is provided by K.S.A. 1991 Supp. 19-4611(a).

Your next question is whether the county may assist or join in the purchase of the medical clinic by way of home rule power other than bond election. Through statutes and Kansas case law the commissioners have been given broad and sweeping authority to decide how local financial matters will be handled. However, the general rule is that funds must be spent only for a "public purpose." Authority discussing the public purpose doctrine includes: Ulrich v. Board of Thomas County Commissioners, 234 Kan. 782, 789 (1984); Duckworth v. City of Kansas City, 243 Kan. 386 (1988); Savings and Loan Association v. Topeka, 87 U.S. 655, 22 L.Ed. 455 (1875). See also Gold, Economic Development Projects: A Prospective, 19 Urban Lawyer 193 (1987);

Leavenworth County v. Miller, 7 Kan. 479 (1871); and
McQuillin, 15 Municipal Corporations § 39.19 (3d Ed.).

The courts will generally defer to the commissioners' determination as to whether or not the expenditure is for a public purpose. However, the courts will step in if it is clear that the funds will only benefit a private entity. The general law governing judicial scrutiny in the application of the "public purpose" doctrine is stated thus:

"Each case must be decided in the light of the existing conditions, with respect to the objects sought to be accomplished, the degree and manner in which that object affects the public welfare, and the nature and character of the thing to be done; but the court will give weight to a legislative determination of what is a municipal purpose, as well as widespread opinion and general practice which regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions. When an appropriation of public funds is primarily for public purposes, it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit. On the other hand, if the result is chiefly that of private benefit, an incidental or even ostensible public purpose will not save its constitutionality. A purpose may be a public one so as to be within a municipal power to appropriate funds therefor, even though it is not a necessary purpose. It has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a specific purpose constitutes a 'public purpose' for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been

unquestionably abused." Attorney General
Opinions No. 91-53, 82-229, 64 C.J.S.
Municipal Corporations, § 185 (1950),
State ex rel., McClure v. Hagerman,
98 N.E.2d 835 (Ohio 1951).

In Ulrich v. Board of Thomas County Commissioners, 234
Kan. 782 (1984), the court held that a transfer of county
assets to the Thomas county hospital served a public purpose.
Therefore, based on this analysis, Norton county would be
able to expend money for the purchase of the medical clinic.

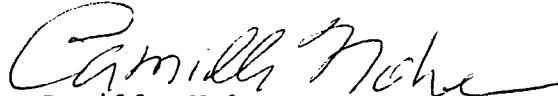
However, funding for this expenditure must come from an
appropriate fund and cannot be diverted from an inappropriate
fund pursuant to K.S.A. 79-2934. Furthermore, K.S.A. 79-2929a
prohibits changing the budget (i.e. switching money from one
fund to another) without going through the budget amendment
procedures.

In conclusion, as long as the private entity is serving a
public purpose the expenditures of public money is
appropriate, as long as the money comes from an appropriate
fund.

Very truly yours,



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Camille Nohe
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