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ATTORNEY GENERAL OPINION NO. 92- 62

Tom R. Smith
Seward County Attorney
604 N. Washington
Liberal, Kansas 67905-0249

Gene H. Sharp
Liberal City Attorney
419 N. Kansas
Liberal, Kansas 67905-2619

Re: Public Health--Local Boards of Health;
Clinics--Joint Board by Cities and Counties;
Agreement; Ability of City to Fund County Board of
Health

Synopsis: The city of Liberal may opt out of K.S.A. 65-205
et seq. by charter ordinance and enact
substitute provisions for offering financial
support to the Seward county board of health.
Cited herein: K.S.A. 65-201; 65-205; 65-208;
65-209; 65-210; Kan. Const., art. 12, § 5.

* * *

Dear Mr. Smith and Mr. Sharp:

As attorneys representing Seward county and the city of
Liberal, respectively, you request our opinion regarding the
city's authority to offer financial support to the county
board of health outside of the authority granted by K.S.A.
65-205 et seq.

You explain that the county board of health was created pursuant to K.S.A. 65-201. For the past 20 years, the city of Liberal and Seward county have established a joint board of health pursuant to an agreement entered into under the provisions of K.S.A. 65-205. In 1991 the city terminated the agreement, apparently because the city no longer wants to have an autonomous board, as required by K.S.A. 65-205, to operate the health department. Based on this fact scenario, you ask:

"1. Can the City of Liberal, Kansas, give a sum of money to Seward County, Kansas, for the County to utilize in the operation of a County Health Department.

"2. Since the interlocal agreement was dissolved as of December 31, 1991, must the City and the County comply with K.S.A. 65-210, and make a division of the funds that were left in the hands of the joint Health Board?

"3. If the City and the county do have to comply with K.S.A. 65-210, can the City abandon any claim to the funds in the hands of the Health Department, and allow the County to keep and utilize those funds for the operation of a County Health Department."

Generally speaking, one governmental entity may not gratuitously contribute public funds to another such entity. See Attorney General Opinion No. 81-41; Joint Consolidated School Dist. No. 2 v. Johnson, 163 Kan. 202, 208 (1947). However, an expenditure that is for a public purpose, as opposed to merely gratuitous may generally be made absent specific limitations on that expenditure such as a statute directing how or when such an expenditure is to be made, the cash basis law, or the absence of an appropriate budgeted fund from which to make the expenditure. See Duckworth v. City of Kansas City, 243 Kan. 386, 387-389 (1988); Ulrich v. Board of Thomas County Comm'rs, 234 Kan. 782, 790 (1984). We presume that the expenditure in question has a public purpose in that the residents of the city benefit from the services provided by the health department as evidenced by the legislative authority allowing the city to cooperate financially. K.S.A. 65-208. Thus, it is left to determine whether any statutory limitations exist.

K.S.A. 65-205 et seq. specifically provide a mechanism for the city and county to cooperate in the operation of a local health department. K.S.A. 65-208 authorizes such cooperating municipalities to levy taxes for this purpose. K.S.A. 65-209 sets forth the procedure for withdrawing from a cooperative

agreement. K.S.A. 65-210 directs how left over funds are to be distributed.

Since there are statutes addressing this area, the city's ability to give money to Seward county to use in the operation of a health department must be determined in light of Blevins v. Hiebert, 247 Kan. 1 (1990). In that case, as here, there was state law providing a means to the end sought by the municipality. The court held that since there was legislation dealing with the area in question, the municipality was bound to comply with the provisions of that legislation. Id., at 12. However, in Blevins, as here (see K.S.A. 65-205), the statutes were nonuniform thus allowing the municipality to charter out of the statutes. Id. at 13. Thus, in order for the city of Liberal to cooperate in the support of the county board of health, it appears that Blevins would require compliance with the provisions of K.S.A. 65-205 et seq. or a charter ordinance (see Kan. Const., art. 12, § 5) allowing the city to adopt a different mechanism for offering such support. If the city chooses to charter out of K.S.A. 65-205 et seq., particularly K.S.A. 65-210, it may disregard the provision requiring division of the funds, and the city may offer financial support to the county board of health if such expenditure is determined to be for a public purpose.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm