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September 8, 2016

ATTORNEY GENERAL OPINION NO. 2016-14

Gary Thompson  
Linn County Counselor  
108 S. Fifth Street  
P. O. Box 184  
Mound City, KS 66056

Re: Townships and Township Officers—Hospitals and Health Care Facilities—  
Hospital Districts in Adjoining Political Subdivisions; Procedure to  
Establish

Townships and Township Officers—Hospitals and Health Care Facilities—  
Health Care Facilities and Services Hospital Districts

Synopsis: The board for a health care facilities and services hospital district is only  
authorized to construct a home for the aged that is located within the  
boundaries of the health care facilities and services hospital district. Cited  
herein K.S.A. 19-2106; 80-2501; 80-2503; 80-2550; 80-2552; and 80-  
2553.

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Dear Mr. Thompson:

As the County Counselor for Linn County, you have asked our office for an opinion on  
whether a health care facilities and services hospital district organized under K.S.A. 80-  
2550 *et seq.* has the authority to construct an assisted living facility that would be  
located outside of its boundaries. You advise that the health care facilities and services  
hospital district is comprised of two townships in Linn County and part of a township in  
Bourbon County. This district currently includes a long-term, critical care facility located

within its boundaries. The board<sup>1</sup> has decided it would like to construct an assisted living facility that would be located outside the boundaries of the health care facilities and services hospital district.

K.S.A. 80-2550(c) defines "health care facilities and services" as "any clinic, long-term care facility, home for the aged, outpatient services, in-home health services, child-care services, respite care services, adult day care services, dietary services, alcohol and drug abuse services and emergency medical or ambulance services." You state that the board believes the proposed assisted living center qualifies as a "home for the aged," which is not defined in K.S.A. 80-2550 *et seq.*<sup>2</sup> For purposes of this opinion, we assume without deciding that the proposed assisted living center falls within the statutory definition of "health care facilities and services."

In determining the board's authority, we look to the intent of the Legislature as expressed in statutory language.<sup>3</sup> We begin our analysis with the statutory definition of a health care facilities and services hospital district.

[A] health care facilities and services hospital district means hospital district, city hospital or county hospital:

- (1) Which was established under the laws of this state in effect at the time established as a hospital district, city hospital or county hospital;
- (2) in which no hospital is being operated and maintained or in which the operation of a hospital has been terminated; and
- (3) in which health care facilities and services are being operated and maintained.<sup>4</sup>

A health care facilities and services hospital district is subject to the following provision.

"Any health care facilities and services hospital district shall be deemed a hospital to the same extent as though the same were a hospital which is being operated and maintained as a hospital and shall be controlled, financed, operated, managed and maintained as provided by the general law relating to such hospital immediately prior to the time the hospital

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<sup>1</sup> "'Board' means a board which is vested with the management and control of a health care facilities and services hospital district." K.S.A. 80-2550(a).

<sup>2</sup> However, we note that "homes for the aged" is defined in K.S.A. 19-2106.

<sup>3</sup> *Stanley v. Sullivan*, 300 Kan. 1015, 1017 (2014) ("This court deems the language of a statute to be the primary consideration in ascertaining the intent of the legislature because the best and only safe rule for determining the intent of the creators of a written law is to abide by the language that they have chosen to use.").

<sup>4</sup> K.S.A. 80-2550(b).

became a health care facilities and services hospital district, and shall be subject to the limitations and restrictions provided by such general law."<sup>5</sup>

Additionally, a health care facilities and services hospital district is subject to the laws governing hospital districts in which a hospital is being operated and maintained; the laws governing health care facilities and services hospital districts are not intended to modify or repeal any provision of the laws governing hospital districts.<sup>6</sup> Thus, we look to the laws governing hospital districts, K.S.A. 80-2501 *et seq.*, to answer your question.

K.S.A. 80-2503 states:

*(a) Any two or more adjoining political subdivisions are hereby authorized to join in the establishment of a hospital district and in the acquisition, construction or reconstruction, improvement, enlargement, remodeling or repairing of a hospital within such hospital district and in the operation and maintenance of any such hospital.*<sup>7</sup>

Based upon the above italicized language in K.S.A. 80-2503(a), we conclude that the board for a health care facilities and services hospital district is only authorized to construct a home for the aged that is located within the boundaries of the health care facilities and services hospital district.

Sincerely,

Derek Schmidt  
Attorney General

Janet L. Arndt  
Assistant Attorney General

DS:AA:JLA:sb

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<sup>5</sup> K.S.A. 80-2552.

<sup>6</sup> K.S.A. 80-2553.

<sup>7</sup> Emphasis added.