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ATTORNEY GENERAL OPINION NO. 2017- 12

Michael C. Robinson
Office of the Stafford County Counselor
209 N. Broadway, 1st Floor
P.O. Box 66
St. John, Kansas 67576

Re: Counties and County Officers—Hospitals and Related Facilities—County Hospitals, Termination of Operations; Procedure; Election; Disposition of Property; Abolition of Board; Transfer of Moneys to County

State Departments; Public Officers and Employees—Public Officers and Employees—Conflict of Interest—Statement of Substantial Interest—Making or Participating in Certain Contracts Prohibited; Exceptions; Abstaining from Action

Synopsis: K.S.A. 19-4625 does not specifically address how a county hospital's debt should be paid upon termination of operation of the county hospital. It only provides that moneys remaining in any fund of the county hospital after termination of its operation and after payment and performance of any obligation thereof shall be transferred to the county general fund.

A hospital board trustee who has a substantial interest in a business that contracts with the hospital does not violate K.S.A. 75-4304 if the hospital board trustee has disclosed the substantial interest and abstained from any action on the contract. Also, K.S.A. 75-4304(d) allows a hospital board trustee/owner to make or participate in the making of a contract that is subject to the competitive bidding process and a contract for which the price or rate is fixed by law. Cited herein: K.S.A. 19-4625; 19-4626; 75-4301a; 75-4304; and 75-4305.

Dear Mr. Robinson:

As county counselor for Stafford County, you request our opinion on two questions. First, you ask whether K.S.A. 19-4625, specifically subsection (d), addresses how a county hospital's debt should be paid upon termination of operations of the county hospital.

K.S.A. 19-4625 provides the standard under which any county commission may close and terminate operations of a county hospital and the procedure that must be followed to terminate operations. In a nutshell, when the county commission by resolution shall determine it is in the best interest of the county to close and terminate the operation of the hospital, or when 5% of the qualified electors of the county by petition requests the county hospital be closed, then an election on the proposition determines whether the hospital will close¹ or continue to operate.² If a majority of the votes cast at the election are in favor of closure, then the county commission may sell or donate, and transfer and convey such hospital and all real and personal property owned and used in connection with the operation of the hospital to a city, hospital district or corporation.³ The county commission and the hospital board remain liable for payment of the normal and usual operating expenses of the hospital until the operation of the hospital is terminated.⁴ Finally, K.S.A. 19-4625(d) provides that once the hospital is closed, the hospital board is abolished and any balance of moneys remaining in any fund after payment and performance of any obligation shall be transferred to the county general fund.

In answer to your first question, K.S.A. 19-4625 does not specifically address how a county hospital's debt should be paid upon termination of operation of the county hospital. It only provides that moneys remaining in any fund of the county hospital after termination of its operation and after payment and performance of any obligation thereof shall be transferred to the county general fund.⁵

Second, you also ask whether it is a conflict of interest for a county hospital board trustee to be an owner of a company with which the hospital signed a written agreement promising to pay a stated sum of money on a specified date or on demand. Whether a conflict of interest exists is a case-specific inquiry that depends on the particular facts of a particular case.

K.S.A. 75-4304 provides:

¹ K.S.A. 19-4625(a).

² K.S.A. 19-4625(b).

³ K.S.A. 19-4625(b).

⁴ K.S.A. 19-4625(c).

⁵ Cf. K.S.A. 19-4626, which authorizes the board of county commissioners "to issue no-fund warrants for the purpose of raising money for financing any insufficiency in the operation and maintenance budget of the hospital during such [budget] year and is hereby authorized to expend such money for such purposes."

(a) No local governmental officer or employee shall, in the capacity of such an officer or employee, make or participate in the making of a contract with any person or business by which the officer or employee is employed or in whose business the officer or employee has a substantial interest.

(b) No person or business shall enter into any contract where any local governmental officer or employee, acting in that capacity, is a signatory to or a participant in the making of the contract and is employed by or has a substantial interest in the person or business.

(c) A local governmental officer or employee does not make or participate in the making of a contract if the officer or employee abstains from any action in regard to the contract.

(d) This section shall not apply to the following:

(1) Contracts let after competitive bidding has been advertised for by published notice; and

(2) contracts for property or services for which the price or rate is fixed by law.

(e) Any local governmental officer or employee who is convicted of violating this section shall forfeit the office or employment.

Generally, K.S.A. 75-4304(a) prohibits public officers from making or participating in the making of contracts in which they have a substantial interest. A hospital board trustee is a public officer.⁶ Substantial interest is defined in K.S.A. 75-4301a. K.S.A. 75-4305 requires a disclosure of substantial interest for any local governmental officer or employee who has not filed a statement of substantial interest. Once it has been established that the public officer has a substantial interest, one would next determine if any of the three exceptions to a conflict of interest for making or participating in the making of a contract apply.

K.S.A. 75-4304(c) provides that “a local governmental [public] officer or employee does not make or participate in the making of a contract if the officer or employee abstains from any action in regard to the contract.” Subsection (d) provides that a public officer or employee may make or participate in contracts let after competitive bidding has been advertised for by published notice, and in contracts for property or services for which the price or rate is fixed by law.

⁶ See K.S.A. 19-4605, Attorney General Opinion Nos. 2012-15 and 1983-11.

Thus, if the hospital board trustee/owner has disclosed the substantial interest and abstained from any action on the contract, he or she does not make or participate in the making of a contract as prohibited by K.S.A. 75-4304. Also, K.S.A. 75-4304(d) allows a hospital board trustee/owner to make or participate in the making of a contract that is subject to the competitive bidding process and a contract for which the price or rate is fixed by law.

Sincerely,

Derek Schmidt
Kansas Attorney General

Athena E. Andaya
Deputy Attorney General

DS:AA:sb