

Subject

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

November 25, 1974

Opinion No. 74- 375

B. E. Whalen
Sherman County Attorney
Sherman County Courthouse
Goodland, Kansas 67735

Dear Mr. Whalen:

I regret the extreme delay in responding to your inquiry earlier this year concerning handling of certain funds to be received by the Northwest Kansas Medical Center. Your request was mislaid, and only recently came to our attention. It may be that the questions have already become moot. If not, however, I hope that the following will be of assistance.

You advise that the Northwest Kansas Medical Center is a county hospital operated under K.S.A. 19-1801 et seq., as amended. The sale of the George Robb estate is now complete, and the hospital will receive approximately \$180,000 from that estate. In addition, the hospital has another \$100,000 in surplus funds at the present time, these being accumulated within the year. Proceeds from the Robb estate sale are now being received. Approximately \$90,000 plus interest is outstanding on a second bond issue issued to build the hospital approximately two years ago. The hospital board of trustees would like to pay over an amount of surplus funds to the county commissioners of Sherman County, Kansas, for the purpose of paying off this indebtedness. This proposal has raised a number of questions stated in your letter, based on K.S.A. 19-1804(4) which states as follows in pertinent part:

"All hospital funds shall be credited to the treasury of the hospital board, and shall be paid out only upon claims and warrants or warrant checks....The said board may designate as a hospital depository for surplus hospital funds a bank located within the county, and shall require the same depository bond that is required in the case of county depositories.

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The board is also authorized and empowered to create a sinking fund for additional equipment and improvements, the maximum amount that may be credited to said sinking fund annually to be an amount not greater than would be obtained by a two (2) mill levy....The board may, by unanimous vote, invest surplus funds, or sinking funds, and unused funds from the issuance of bonds in securities, and the income therefrom shall be credited to the hospital fund. Any surplus moneys remaining in the hospital fund for a period of five (5) years, and for which there is not an immediate or prospective need may, by action of the board, be transferred to the county general fund."

You inquire, first, whether the hospital board of trustees must hold their surplus funds for a full period of five years before such funds may be transferred to the county general fund, or whether funds presently in the surplus fund account may be transferred at this time, although they have not been held for a full five years. The section contains no definition of what constitutes "surplus funds." It is fair in this instance, however, to apply the utilitarian definition suggested in K.S.A. 12-1675, that surplus funds are "moneys not immediately required for the purposes for which the moneys were collected or received" When funds are deposited in the depository designated by the board of trustees for surplus funds, such funds remain surplus funds only so long as permitted to remain in the depository, and are not required for the purposes for which collected or received. If, in the judgment of the board of trustees, the funds may and should be used for hospital purposes subsequent to their deposit in the surplus funds depository, the board may withdraw the funds or any portion of them therefrom, and use them as the board sees fit. The moneys in that depository remain surplus funds only so long as they are not needed for the purposes for which they were collected and received. If the board of trustees determine that funds in the surplus fund depository are needed, the board may transfer them out of that fund at any time, notwithstanding the funds have not been there for a five year period. Thus, in response to your first question, it is our view that the board may transfer the surplus funds at the present time.

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You inquire, secondly, whether the board of trustees may earmark a sinking fund for the payment of these bonds at this time, which sinking fund is used for that purpose and no other. Despite the troublesome ambiguities found in K.S.A. 19-1804(4), this provision is fairly detailed in its enumeration of the funds which the board may create. Only one sinking fund is authorized for "additional equipment and improvements," and the annual amount which may be credited to it is limited to an amount no greater than that which would be obtained by a two mill levy. The penultimate sentence of the section, however, authorizes the investment of "sinking funds." [Emphasis supplied.] However, under the general rule of construction that where power has been granted in fairly precise detail concerning a given subject matter, the legislature is deemed to have spoken comprehensively concerning the subject matter thus addressed, we cannot but conclude that the board may create only those sinking funds authorized by law, and that a fund such as you suggest is not within the authority granted the board by K.S.A. 19-1804.

You inquire, further, whether the board of trustees of the hospital may transfer moneys from their funds directly to the county general fund for the purpose of paying interest on the bonds each and every year. We find no objection to such transfers.

Lastly, you question how Senate Bill 175, enacted by the 1974 Legislature, may affect these questions. Section 2 thereof states in pertinent part as follows:

"Counties are hereby empowered to transact *all county business and perform such powers of local legislation and administration* as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: *First*, counties shall be subject to all acts of the legislature which apply uniformly to all counties..." [Emphasis supplied.]

K.S.A. 19-1801, which, of course, governs the application of K.S.A. 19-1804, does not apply uniformly to all counties. Accordingly, on the face of the matter, K.S.A. 19-1804 is subject to charter resolution by the county. The administration of the county hospital and its funds is placed by statute

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with the board of trustees thereof, who are appointed by the board of county commissioners. However, the hospital is supported by a tax levied by the county, and we believe that the administration of the county hospital and its funds is properly to be considered "county business," concerning which the county may exercise its powers of self-government under Senate Bill 175. Accordingly, by charter resolution, authority could be provided for the creation of additional sinking funds, and the limit on the sinking fund for additional equipment and improvements may be raised or altered otherwise, by charter resolution, which is defined by section 3(b) of the bill as a

"resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject."

If you should have further questions, please do not hesitate to call upon us.

Yours very truly,



VERN MILLER
Attorney General

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