



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

February 17, 1976

ATTORNEY GENERAL OPINION NO. 76- 63

Mr. Charles V. Hamm  
General Counsel  
Department of Social and  
Rehabilitation Services  
State Office Building  
Topeka, Kansas 66612

Re: Public Health--Centers--Mental Health

Synopsis: Both the original and successor members of the governing boards of multi-county facilities established under K.S.A. 19-4001 *et seq.* are to be appointed by the selection committee established pursuant to K.S.A. 19-4002, by appointment thereto of two members by the chairman of the board of county commissioners of each participating county.

\* \* \*

Dear Mr. Hamm:

K.S.A. 19-4002(a) provides for the appointment of a governing board for a mental health center and/or facilities for the mentally retarded established under K.S.A. 19-4001 *et seq.* The first paragraph provides thus:

"Every county or combination of counties desirous of establishing a mental health center and/or facilities for the retarded shall establish a community mental health and/or mental retardation governing board, hereinafter referred to as the governing board, which board shall be composed of not less than seven (7) members. The

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members of such governing board shall be appointed by the board of county commissioners of said county." [Emphasis supplied.]

Although the first sentence refers to action by a single county or a combination of counties, the second sentence refers to appointment of members of the governing board by a single board of county commissioners. It must be construed to apply only to a single-county mental health center and/or facilities for the retarded. The second paragraph provides for action by a combination of counties, thus:

"When any combination of counties desires to establish a mental health center and/or facilities for the mentally retarded, the chairman of the board of county commissioners of each participating county shall appoint two (2) members to a selection committee, which committee shall select the governing board: *Provided*, That each participating county shall have at least one (1) representative on such board."

You advise that the initial members of the governing boards of multi-county facilities were established in this fashion, *i.e.*, by appointment by the selection committee constituted as provided above. However, when terms of office of the members first appointed expired, in many instances, the member appointed to succeed a member from a particular county was appointed by the board of county commissioners, rather than by the selection committee. You inquire whether such successor members should be appointed by the respective boards of county commissioners, or by the selection committee.

Whenever a multi-county facility is established, the chairman of the board of county commissioners of each participating county must appoint two members to a selection committee, which shall in turn appoint the members of the governing board, and designate the term of office of each. The board of county commissioners of each participating county is given no authority to appoint directly the first members of the governing board or, indeed, to make subsequent appointments. Lacking some express or reasonably implied direction that successor members of the governing boards are to be appointed by a procedure different from that used for appointment of the initial members, it is my opinion that the selection committee originally appointed by the participating counties is a continuing body with a

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continuing responsibility, to appoint not only the original members but the successor members. In order to conclude that the boards of county commissioners are vested directly with the power of appointment of successor members, there must be some express or reasonably implied provision vesting in the boards such power. There is none, and lacking such direction, it is my opinion that successor members should be appointed in the same fashion as original members are appointed.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj