

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 21, 1977

ATTORNEY GENERAL OPINION NO. 77-208

Mr. John E. Bremer
Lund Law Firm, Chartered
Oberlin, Kansas 67749

Re: Counties--Hospitals--Trustees

Synopsis: A county may by charter resolution exempt itself from the provision of K.S.A. 19-1803, as amended by 1977 Senate Bill 63, which prohibits a member of the board of trustees from holding an elective state, county or city office.

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Dear Mr. Bremer:

K.S.A. 19-1803 provides for the appointment of members of the board of trustees of a county hospital established under K.S.A. 19-1801 et seq. It includes a provision that none of the trustees shall hold any state, county or city elective office, and that not more than one member shall be a physician. Although this section has been amended by 1977 Senate Bill 63, the disqualification continues in effect.

You advise that an individual who has been serving, and continues to serve, as a trustee of the Decatur County hospital was elected to the Oberlin city council this spring, and took office May 3, 1977. The court wishes to exempt itself from the provision of K.S.A. 19-1803, in order that this individual may continue to serve as a hospital trustee. Thus, the question arises whether, in the exercise of its statutory home rule powers, the county may exempt itself from the disqualifying provision of K.S.A. 19-1803. K.S.A. 19-101a provides in pertinent part thus:

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"(a) 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"

As you point out in a most helpful review of the history of this provision, it was first enacted in 1913, as part of an act enabling counties having less than 40,000 inhabitants to establish and maintain hospitals. Then, it included only a direction that no trustee should be a physician. Ch. 202, § 3, L. 1913. It was amended in 1919, to provide only that none of the trustees shall have any personal pecuniary interest, either directly or indirectly, in the purchase of supplies for the hospital, unless they are purchased by competitive bids. In 1947, it was again amended, ch. 147, L. 1947, to provide that none of the trustees shall be practicing physicians or hold any state, county or city elective office. It was further amended in 1971 to permit no more than one trustee to be a physician.

Throughout the course of amendments, the section has remained a part of an enactment, K.S.A. 19-1801 et seq., which did not apply uniformly to all counties.

Thus, K.S.A. 19-1803 remains, including its 1977 amendment, a provision of act of the legislature which does not apply uniformly to all counties. The disqualification of trustees from holding any state, county or city elective office does not relate to any subject concerning which counties are forbidden to legislate in K.S.A. 1976 Supp. 19-101a, and the matter involved is entirely a local one, involving only the removal of a disqualification for holding a position on the board of trustees of the county hospital. Thus, I can but conclude that the exemption is one from which the county may exempt itself by enactment of an appropriate charter resolution.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj