



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

October 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 352

Mr. Wayne T. Stratton  
Goodell, Casey, Briman & Cogswell  
215 East Eighth Street  
Topeka, Kansas 66603

Re: Cash-Basis Law--County Hospitals--Boards of Trustees

Synopsis: The board of trustees of a county hospital which is organized and appointed pursuant to K.S.A. 19-1801 et seq. is not a "municipality" or a "governing body" as those terms are defined at K.S.A. 10-1101(a) and (b), and is thus not subject to the restrictions of the cash-basis law, K.S.A. 10-1101 et seq., in the operation and management of the county hospital.

\* \* \*

Dear Mr. Stratton:

On behalf of the board of trustees of the Newman Memorial County Hospital, you request my opinion concerning the applicability of the Kansas cash-basis law, K.S.A. 10-1101 et seq., to the board.

K.S.A. 10-1113 provides that it shall be unlawful for "any governing body of any municipality" to incur and create any indebtedness in excess of the amount of funds actually on hand in the treasury at the time for such purpose. K.S.A. 10-1101(a) states thus:

"'Municipality' shall be construed and held to mean county, township, city, municipal university, school district, community junior college, drainage districts, and any other similar political subdivision or taxing district of the state."

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Subsection (b) states that the term "governing body" shall

"be construed and held to mean board of county commissioners of any county, township board of any township, mayor and councilmen or board of commissioners of any city, board of education of any school district, board of trustees of any community junior college, board of regents of any municipal university, board of directors of any drainage district, board of park commissioners of any city, and any other governing body or board of a municipality having authority under the laws of this state to create indebtedness against the municipality."

Thus, a "municipality" which is subject to the cash-basis law is a political subdivision which has the power to levy taxes, and a "governing body" which is subject to the act is the governing body of such taxing subdivisions (with the lone exception of board of park commissioners).

In Fort Scott Board of Library Directors v. Drake, 147 Kan. 157 75 P.2d 275 (1938), the city library board, which was organized under G.S. 1935 12-1201 et seq. and which was not itself authorized to levy taxes, argued that it had become a taxing subdivision and had acceded to the power to levy taxes, based upon certain language in the title and initial section of the 1933 budget law which referred to library boards as members of a class of taxing subdivisions. The court held that despite the reference, the 1933 budget law did not alter the substantive power of the board and did not empower it to levy taxes. It was not, the court held, a "taxing subdivision."

Thereafter, in an opinion dated September 18, 1945, counsel for the State Commission of Revenue and Taxation considered the "status of library boards . . . with respect to application of the budget . . . and cash basis laws of the state." He stated in pertinent part as follows:

"[T]he library fund is a fund which is authorized by statute to be established. It is a part of the budget of the city. In my opinion the library fund is subject to the same restrictions and limitations as other

funds as far as the city is concerned. It is subject to the cash basis law and also to the tax limitation laws the same as other funds . . . .

\* \* \*

"The fact that the library is administered by a separate Board, and not the governing body of the city, does not in my opinion relieve the city from compliance with the general budget laws as to this particular fund. In my opinion, the Library Board is merely an administrative board, an arm of the city government, and as much a part of the city government as the fire department, police department, or street department."

The statutes involved in that opinion, G.S. 12-1201 et seq., have long since been repealed, and it is unnecessary here to pursue the particular questions raised there regarding library boards.

However, the board of trustees of a county hospital is not merely an administrative arm of county government on an equal footing with, e.g., the road and bridge department, the sheriff's department and the like. The budget of the hospital is not adopted by the board of county commissioners, but by the board of trustees themselves. K.S.A. 19-1804(3). Control of the expenditures of hospital funds is vested exclusively in the board of trustees of the hospital under K.S.A. 19-1804(6):

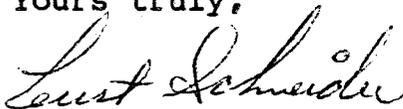
"The board shall have exclusive control of the expenditures of all moneys collected to the credit of the hospital funds, and all expenditures, including the compensation of members, shall be made only after approval of a majority of members appointed to said board . . . ."

Indeed, entire responsibility for the management and operation of the hospital is vested in the board of trustees.

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Clearly, of course, the county, and its governing body, the board of county commissioners, are subject to the cash-basis law, which governs all indebtedness which is created against the county. The hospital board of trustees cannot by its own action create any indebtedness against the county itself, for it may obligate no moneys other than the hospital funds under its control. Given the relative autonomy of the board of trustees, and its independence from the board of county commissioners regarding the expenditure of hospital funds, the board of trustees cannot be regarded as merely an administrative and subordinate arm of the board of county commissioners and for that reason subject to the cash-basis law. In my judgment, the board of trustees is clearly an independent body which is neither a "municipality" nor a "governing body" as those terms are defined at K.S.A. 10-1101(a) and (b), and is not subject to the restrictions of the cash-basis law in the management and control of the county hospital.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj