



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider  
Attorney General

January 17, 1978

### ATTORNEY GENERAL OPINION NO. 78- 24

Mr. E. A. Jarvis  
Statewide Health Coordinating Council  
154 N. Broadway, Room 1210  
Wichita, Kansas 67202

Re: Public Health--Health Facilities--Appeal of  
Review Agency

Synopsis: The term "records" as it is used in K.S.A. 1976 Supp. 65-4816, shall be construed to mean any documents which were considered by a health systems agency, the Department of Health and Environment, and the Statewide Health Coordinating Council, which those bodies utilized to reach a decision regarding an application for a certificate of need.

\* \* \*

Dear Mr. Jarvis:

Pursuant to K.S.A. 1976 Supp. 65-4815, the legislature has enacted the means by which a party may appeal a decision of the Statewide Health Coordinating Council (hereinafter referred to as SHCC) to a district court. Once the SHCC has been properly served with notice of the appeal, it is charged with the duty of filing certain documents with the district court. The specific statutory language which imposes this duty is found in the last sentence of K.S.A. 1976 Supp. 65-4816, which reads as follows:

"The review agency [SHCC] within twenty (20) days after being served shall file with the clerk of the district court

Mr. Jarvis  
Page Two  
January 17, 1978

all records of the health systems agency, state agency and review agency in the case, including the evidence taken at the previous proceedings."

As the Chairman of the SHCC, you have asked my opinion as to the definition of "records" as that term is used in the above-quoted statute.

To answer the question which you have raised, it is necessary to consider the context in which applications for certificates of need are reviewed by local health system agencies, the Department of Health and Environment and the SHCC. K.S.A. 1976 Supp. 65-4802 states that certain health facility projects which are enumerated in K.S.A. 1976 Supp. 65-4805 may not be undertaken unless a certificate of need is first obtained. Persons desiring to obtain certificates of need must submit simultaneous applications with the appropriate health systems agency and the Department of Health and Environment. The health systems agency must review the application and submit comments, findings and recommendations to the Department of Health and Environment within forty-five (45) days after it receives the application. K.S.A. 1976 Supp. 65-4807. The Department of Health and Environment is to review the application and either approve, approve subject to modification, or deny the application within ninety (90) days after receipt of the application. K.S.A. 1976 Supp. 65-4808. Decisions of the Department of Health and Environment may be reviewed by the SHCC if an adversely affected party files a written request with the SHCC within thirty (30) days following the issuance of the decision. K.S.A. 1976 Supp. 65-4809. Following the decision of the SHCC, an aggrieved party is allowed one other appeal to a state district court. K.S.A. 1976 Supp. 65-4816.

This explanation of the various review procedures process brings us to the question of what constitutes the "records" referred to in K.S.A. 1976 Supp. 65-4816. A reading of that statute leads one to assume that the term "records" is meant to include any documents, papers, reports, surveys, etc., which were made part of the files of either the health systems agency, SHCC or the Department of Health and Environment, and which were used by that body to reach a decision regarding the application for certificate of need. By making all evidence of this type part of the district court file, attorneys for the respective parties will be able to fully advise the court of the manner in which particular decisions were reached.

Mr. Jarvis  
Page Three  
January 17, 1978

While it can be argued that "records" should be construed so as to include only transcripts of the various review bodies, the language of the statute clearly warrants a broader interpretation. By stating that the SHCC shall file all records with the district court "including the evidence taken at the previous proceedings", the legislature has clearly intended that the courts be provided with a broader record on appeal than that which is usually associated with the transcript of an administrative hearing.

It is, therefore, my opinion that when a decision of the SHCC is appealed to a district court, the SHCC must file with the court all pertinent records of the appropriate health systems agency, the SHCC and the Department of Health and Environment as I have outlined above.

Very truly yours,

*Curt T. Schneider*  
CURT T. SCHNEIDER  
Attorney General

CTS:CAB:ksn