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October 12, 1978

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ATTORNEY GENERAL OPINION NO. 78-335

Mr. Theodore H. Hill
County Counselor
Sedgwick County Courthouse
Wichita, Kansas 67203

Re: Mental Health Clinics--Jurisdiction--Joint Board of Health

Synopsis: Legal responsibility and jurisdiction for the operation of a mental health clinic which is established pursuant to K.S.A. 65-211 is vested in the joint board of health, and may not be removed from that jurisdiction by joint resolution of the participating municipalities.

* * *

Dear Mr. Hill:

You advise that in the course of considering applications by the Sedgwick County Department of Mental Health for continuation of two staffing grants for the operation of the North and South Sedgwick County Community Mental Health Centers, the Regional Health Administrator for Region VII of the U.S. Department of Health, Education and Welfare has questioned the legal status of the Sedgwick County Department of Mental Health. He questions whether it is a legal entity which has the legal authority, capacity and capability to carry out the operation of the North and South Sedgwick County Community Mental Health Centers, or whether the Wichita-Sedgwick County Joint Board of Health is the entity charged with that responsibility.

K.S.A. 1977 Supp. 65-205 provides in part thus:

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"Whenever it shall be determined that the public health and sanitation of any city or county may be best promoted by the creation of a joint board of health for any two or more cities, counties, or city and county the governing bodies of such municipalities may so declare by resolution and may, by agreement with each other, establish a joint board of health with the same powers, duties, and limitations as are now or hereafter may be provided by law for the creation and conduct of boards of health to act severally in such municipalities

* * *

The actions of said board shall be subject to the approval of the governing bodies of the city and county sitting *en banc* and said governing bodies may, while sitting *en banc*, provide by mutual agreement and resolution, rules and regulations for the operation of said joint board of health."

K.S.A. 65-211 provides that in counties where there is established a joint board of health as provided above, the governing bodies of the municipalities involved may by resolution provide for the establishment of a mental health clinic for the diagnosis and treatment of mental illness, "which mental health clinic when so established shall be operated by and be subject to the jurisdiction of such joint board of health to the same extent as other public health services provided thereby."

You enclose a number of documents describing actions taken by the governing bodies of the City of Wichita and Sedgwick County. On July 6, 1971, the board of county commissioners adopted a resolution creating a mental health clinic, to be maintained in accordance with rules and regulations promulgated by the joint board of health of the City of Wichita and Sedgwick County, Kansas. On July 18, 1961, the city governing body adopted a similar resolution. By joint resolution dated August 8, 1961, the two governing bodies, the city and county commissioners provided for the integration of the mental health clinic in the Wichita-Sedgwick County Department of Public Health.

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In 1969, the two governing bodies took certain actions to change the status of the mental health program. At a joint *en banc* city-county session held on July 29, 1969, by telephone conference call, a motion was passed in favor of "separating Mental Health from Community Health and making two separate departments out of those health departments." At a subsequent *en banc* meeting of the two governing bodies on August 15, 1969, a resolution was considered which would ratify the action taken previously, and provide for establishing the mental health program separate and apart from the county mental health department. Apparently, action was delayed, and it was again taken up at a joint *en banc* meeting of the two governing bodies on December 19, 1969. A motion was proposed providing for

"the separation of Mental Health from Community Health by instituting a reorganization of both departments by the Board of Health which will continue to receive its appointments by both the City and County Commissioners and that the administration of Mental Health be handled solely by the County Commission."

It was suggested that the motion was technically incorrect, because there was at that time no separate mental health department, and the motion was proposed to be amended

"to approve the separation of Mental Health from Community Health by instituting a reorganization of the Community Health Department by the Board of Health rather than both departments instituting a reorganization."

As proposed and modified, the motion was passed.

The mental health clinic in question was established under the authority of K.S.A. 65-211, which requires that it be operated by and subject to the jurisdiction of the joint board of health. That statute provided then, and provides now, no authority for the city and county governing bodies by joint action to remove the mental health clinic from the jurisdiction of the joint board of health. If it was the purpose of the December 19, 1969, joint resolution to divest the Joint Board of Health of its legal

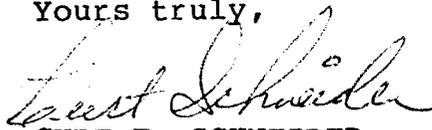
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jurisdiction over the mental health clinic, it was obviously ineffective for that purpose.

It may be that the mental health clinics have been operated and administered since that time by all parties concerned with the understanding that they were operated and administered solely by the county. The formal basis for that understanding appears to be the 1969 joint resolution adopted by the city and county commissioners providing that the mental health program shall be administered solely by the county. As stated above, however, that joint resolution was ineffective to amend the plain direction of K.S.A. 65-211, that the mental health clinic be operated under the jurisdiction of the joint board of health.

This appears to be an unusual instance in which formal action taken by the city and county nearly a decade ago, and under which the mental health clinics have operated at all times since that time, has been legally ineffective to accomplish its formal purpose, although, in fact the clinics have apparently been administered in fact by the county since that time. On the basis of the documentation enclosed with your letter, we cannot conclude as a matter of law that Sedgwick County is indeed the legal entity vested by law with the responsibility for the operation of the North and South Sedgwick County Community Mental Health Clinics, because K.S.A. 65-211 vests that legal authority, jurisdiction and responsibility in the Joint Board of Health.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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