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April 20, 1979

ATTORNEY GENERAL OPINION NO. 79- 65

The Honorable Billy Q. McCray
State Senator, 29th District
1532 North Ash
Wichita, Kansas 67214

Re: Counties and County Officers -- County Commissioners --
Sale of County Property

Synopsis: The sale or disposal of Sedgwick County's E. B. Allen Memorial Hospital by the Board of County Commissioners is governed by K.S.A. 1978 Supp. 19-211, and if the value thereof exceeds \$100,000, the proposition of sale or disposal must first be approved by a vote of the county's qualified electors.

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Dear Senator McCray:

You have inquired whether the Sedgwick County Commissioners have the authority to sell the E. B. Allen Memorial Hospital without a vote of the people in Sedgwick County. We are advised that the hospital is a county hospital organized and operated by Sedgwick County pursuant to K.S.A. 19-1860 et seq., and you indicate that the hospital has value in excess of \$100,000.

As you have correctly noted, K.S.A. 1978 Supp. 19-211 generally governs the sale of county property. If a board of county commissioners desires

The Honorable Billy Q. McCray
Page Two
April 20, 1979

to sell or dispose of county property (except property belonging to the county law enforcement department) which is valued in excess of \$25,000, the provisions of that statute govern such sale or disposition. For the property which has the value of more than \$25,000, but not more than \$100,000, the board may sell or dispose of the property only by unanimous vote of the commissioners and by giving public notice as particularly prescribed by the statute. For property which is valued in excess of \$100,000, the following portion of the statute governs:

"No property, the value of which exceeds one hundred thousand dollars (\$100,000), shall be sold or disposed of by any board of county commissioners, unless the proposition of sale or disposal of such property shall first be submitted to a vote of the electors of the county at a question submitted election called therefor . . . or at a general election. If a majority of the votes cast at any such election shall authorize any sale, such sale shall be made upon the notice hereinbefore prescribed by publication, to the highest bidder"

Unless the county has other statutory authority to sell or dispose of the county hospital, the above-quoted provision must govern such sale or disposal. We find that K.S.A. 19-1860, the statute which empowers certain counties (including Sedgwick County) to establish and operate the hospital or health care facility, also permits the commissioners to determine, in their discretion, "that it is in the best interest of . . . [the] county to rent, let or lease" the hospital or facility "to any person, persons, corporations or society for the purpose of maintaining and operating said county hospital" The board of hospital trustees, established and appointed pursuant to K.S.A. 19-1860a, is "charged with the businesslike supervision, care and custody of all hospital property." K.S.A. 1978 Supp. 19-1860b(6). Neither of these sections, however, make any provision for sale of the property, and we find no such provision in the succeeding relevant sections, or elsewhere in Article 18 of Chapter 19, Kansas Statutes Annotated. Thus, absent any other apparent authority to sell, we find that K.S.A. 1978 Supp. 19-211 is controlling.

A question similar to the one you have raised was addressed by Attorney General Vern Miller in 1971. The Wilson County Attorney inquired whether the Wilson County Commissioners had authority to sell or donate the county hospital to a city or non-profit religious corporation. The Attorney General acknowledged that K.S.A. 19-18,116 authorized

The Honorable Billy Q. McCray
Page Three
April 20, 1979

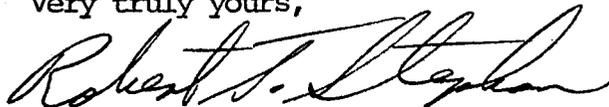
such transfers for counties with a population of more than 20,000 and not more than 27,000, and with an assessed tangible valuation of more than \$75 million. He noted, however, that "[t]he Legislature failed to grant such authority to counties falling without the described classification." Citing the maxim of statutory construction expressio unius est exclusio alterius and the Kansas rule that "an affirmative description of powers granted implies a denial of non-described powers," Attorney General Miller concluded that

"the Legislature intended to deny the power to make such transfers to all save those counties falling within the described classification.

". . . [D]isposal of the county hospital by the Wilson County commissioners remains governed by the general county property disposal statute, K.S.A. 19-211." Opinions of the Attorney General, Vol. VII, pp. 327-28.

Sedgwick County also falls "without the described classification" set forth in K.S.A. 19-18,116, and as we have noted previously, we find no authority whereby Sedgwick County may sell or transfer its county hospital except pursuant to K.S.A. 1978 Supp. 19-211. Accordingly, we conclude that the sale or disposal of Sedgwick County's E. B. Allen Memorial Hospital by the Board of County Commissioners is governed by K.S.A. 1978 Supp. 19-211, and if the value thereof exceeds \$100,000, the proposition of sale or disposal must first be approved by a vote of the county's qualified electors.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:may