



STATE OF KANSAS

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June 27, 1979

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ATTORNEY GENERAL OPINION NO. 79-126

Mr. Peter K. Curran
Petefish, Curran & Immel
Lawyers
643 Massachusetts Street
Lawrence, Kansas 66044

Re: Cities of the First Class--City Hospitals--
Applicability of the Cash-Basis Law

Synopsis: The Cash-Basis Law (K.S.A. 10-1101 et seq.) applies only to subdivisions of the state authorized by law to raise money by taxation. A board of trustees of a city hospital, appointed pursuant to K.S.A. 1978 Supp. 13-14b09, has no authority to raise money by taxation; therefore, the fiscal affairs of such board are not subject to the Cash-Basis Law.

* * *

Dear Mr. Curran:

On behalf of the Board of Trustees of Lawrence Memorial Hospital, you request our opinion concerning the applicability of the Cash-Basis Law (K.S.A. 10-1101 et seq.) to the fiscal policies of the Board of Trustees of said hospital.

You explain that Lawrence Memorial Hospital is a hospital managed and controlled by a Board of Trustees, appointed by the governing body of the City of Lawrence, Kansas, pursuant to K.S.A. 1978 Supp. 13-14b09. From time to time, the City of Lawrence, has levied a tax on tangible property within the city for the purpose of equipping, operating, maintaining, and improving the hospital under the authority granted pursuant to K.S.A. 13-14b12. However, the tax funds generated by such tax levy have constituted a very minor portion of the moneys used for such purposes. The bulk of such funds have been generated by operation of the hospital.

Mr. Peter K. Curran
Page Two
June 27, 1979

In our judgment, resolution of your inquiry turns upon the question of whether the Lawrence Memorial Hospital is a "municipality" under the Cash-Basis Law. Under said law, that term is defined in K.S.A. 10-1101(a):

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

A review of prior Attorney General opinions regarding the provisions of K.S.A. 10-1101 et seq. reveals that, since July 16, 1973, the date on which Attorney General Opinion No. 73-246 was issued, this office has consistently found that, due to the above-quoted statutory definition, the Cash-Basis Law applies only to taxing subdivisions or districts. See, also, Attorney General Opinion Nos. 76-149 (holding the Cash-Basis Law inapplicable to community mental health centers) and 76-320 (concluding that the Metropolitan Topeka Airport Authority, in possessing the power to levy taxes, is subject to the Cash-Basis Law). We concur with these prior opinions.

In State, ex rel., v. Board of Education, 137 Kan. 451 (1933), which was an original proceeding in mandamus to compel the defendant school district to comply with the Cash-Basis Law, the Court stated:

"The act (L. 1933, ch. 319) pertains to the indebtedness of subdivisions of the state authorized by law to raise money by taxation and to expend the money so raised in performing their respective governmental functions."
Id. at 452.

The relevance of this judicial pronouncement cannot be over-emphasized, for as Claude I. Depew observes in his article, "The Municipal Cash Basis Act," 1 J.B.A.K. 291 (1933): "The case was presented and briefed and promptly decided by the court, the decision being announced on Saturday, April 29 [1933], two days before the law went into actual operation." Id. at 292. Thus, this decision was rendered by a Court that was familiar with the conditions and causes which impelled enactment of the Cash-Basis Law, and the object sought to

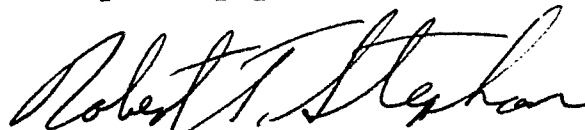
Mr. Peter K. Curran
Page Three
June 27, 1979

be obtained thereby. Therefore, in our judgment, this decision provides unmatched assistance in determining the legislative intent underlying enactment of the Cash-Basis Law. Such determination is essential to our opinion, since the fundamental rule of statutory construction to which all others are subordinate, is that the intent of the legislature governs when that intent can be ascertained from the statute. See Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357, 367 (1978), and cases cited therein; Perkins v. Lenora Rural High School, 171 Kan. 727, 731 (1951); and Craig v. Craig, 143 Kan. 624, 628-629 (1936), and the cases cited therein.

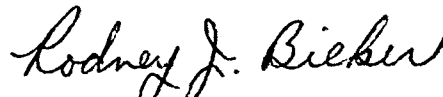
In light of the 1933 pronouncement by the Court in State, ex rel., v. Board of Education, supra, that the legislature intended the Cash-Basis Law to pertain "to the indebtedness of subdivisions of the state authorized by law to raise money by taxation," it is, in our judgment, settled that the Cash-Basis Law applies only to taxing subdivisions of the state. Thus, since the Board of Trustees of Lawrence Memorial Hospital has no authority to raise money by taxation, it is our opinion that said Board's fiscal affairs are not subject to the Cash-Basis Law, K.S.A. 10-1101 et seq.

If the legislature desires to include hospitals and other agencies, boards and instrumentalities of those taxing subdivisions expressly mentioned in K.S.A. 10-1101(a), it can do so by adopting a definition of the term "municipality" similar to the one found in K.S.A. 1978 Supp. 75-1117 or in K.S.A. 12-105a(a). Until this is done, it is our opinion that only those entities authorized by law to raise money by taxation (but not mere agencies or instrumentalities thereof) are subject to the Cash-Basis Law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:gk