



STATE OF KANSAS

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March 26, 1980

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ATTORNEY GENERAL OPINION NO. 80- 79

David R. Heger
Miami County Attorney
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Paola, Kansas 66071

Re: Counties and County Officers--Hospitals--When
Election Required for Tax Levy

Synopsis: The levy authorized by the voters of Miami County in 1952 constitutes continuing authority for the county to levy up to two (2) mills for hospital purposes. No additional election is required to raise the mill rate to this limit. However, if bonds are to be issued pursuant to K.S.A. 1979 Supp. 19-1869 to finance construction and equipping of an addition to the hospital, an election is required. Statutes cited: K.S.A. 1979 Supp. 19-1801, 19-1809, 19-1869; K.S.A. 79-1947.

* * *

Dear Mr. Heger:

You inquire whether the board of commissioners of Miami County, Kansas, may levy up to two (2) mills tax pursuant to K.S.A. 1979 Supp. 19-1801 for the maintenance of the county hospital. You advise that in 1952 the voters of Miami County authorized the county commission to levy up to two (2) mills for the "establishment and maintenance of a Public Hospital." See Exhibit A, attached. The board of county commissioners believed it could not use the two-mill levy after the \$350,000 bond issue to construct the hospital was satisfied. Subsequently, the county has provided \$40,000 annually to the hospital budget under the authority of K.S.A. 1979 Supp. 19-1809.

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The hospital now wishes to purchase new x-ray equipment and build an addition to the hospital to house it. You are concerned that the two-mill levy is no longer authorized since the construction bonds have now been retired. In addition, you express concern over the changes made to K.S.A. 1979 Supp. 19-1809 by the Kansas Legislature requiring an election in order to levy the annual tax provided therein.

K.S.A. 1979 Supp. 19-1801 authorizes the county commission to levy a tax not to exceed two (2) mills (K.S.A. 1979 Supp. 79-1947) for the "establishment and maintenance" of a county hospital upon the approval of the voters of the county. In addition, the Kansas Supreme Court has interpreted section 19-1801 as contemplating that taxes for more than one year may be authorized for the support of hospitals. Atchison, T. & S.F. Ry. Co. v. McPherson County Comm'rs., 119 Kan. 695, 697 (1925). See, also, Attorney General Opinion No. 79-47, page 7. The statute does not suggest that the levy must be discontinued upon payment of the initial construction costs of the hospital building. Nor does the statute suggest that the tax levy may not be raised or lowered within the two (2) mill maximum limit during any subsequent year. In short, so long as the funds derived from the mill levy (within the maximum authorized by law and the original hospital election) are used for the purposes authorized by the statute, namely establishment and maintenance of the hospital, the levy may be continued by the county.

Thus, since Miami County voters approved a maximum two-mill levy, such levy may be continued for use in maintaining the county hospital without a further election. A careful reading of the ballot used in the election authorizing the Miami County Hospital shows clearly that the voters approved the levy for hospital maintenance and did not limit the total receipts of the levy to the \$350,000 estimated for initial construction, although construction or building costs were thereby limited by the election. See Exhibit A (attached). This being the case, the authority granted by K.S.A. 1979 Supp. 19-1809 to levy beyond the two (2) mills is not necessary.

The maintaining of a hospital includes more than the sweeping of floors and necessarily includes the repair and replacement of existing equipment. We see no reason why the advent of new equipment necessary for hospital operations would not fall within the term "maintenance." In Concordia-Arrow Flying Service Corp. v. City of Concordia, 131 Kan. 247 (1930), the Kansas Supreme Court was instructive in upholding the constitutionality of a municipal airport statute. While concluding the terms "operate" and "maintain" were synonymous

for the purposes of the statute in question, the Court said:

"To operate an airport is to maintain it in a manner to effect accomplishment of results appropriate to the nature of the enterprise. To maintain an airport is to keep it in a state of efficiency for the furnishing of those facilities and the rendition of those services which air transportation and communications demand."
Id. at 250.

We believe the Court would follow the same rationale with regard to a county hospital. Indeed, the Arkansas Supreme Court so held with regard to a city hospital saying in pertinent part: "A hospital is more than a mere building of four walls and a roof. . . . Certainly the equipping of the hospital is an essential part of its construction."
Hollis v. Erwin, 374 S.W.2d 828, 833 (1964).

This is not to suggest that "maintain" as used throughout the various statutes of this state is always the equivalent of "improve" or "equip" or "operate," etc. That must be determined on a case-by-case basis, in light of the context in which the term is used and the underlying legislative intent which that context conveys. However, in this instance, we believe the legislature has manifested an intent that "maintain" be viewed in its broadest context, as was done by the Court in Concordia-Arrow Flying Service Corp., *supra*. Our conclusion is predicated on our perception of the ultimate legislative purpose for 19-1801, which can be gleaned from the statute itself, as well as other statutes in pari materia.

Although as previously stated counties need not turn to the language of K.S.A. 1979 Supp. 19-1809 unless the county has already reached the maximum mill rate, that section is useful in determining what is meant by the term "maintenance" in K.S.A. 1979 Supp. 19-1801. Section 19-1809 is supplementary to 19-1801. It authorizes the county "to levy a tax each year in addition to the tax for hospital fund hereinbefore provided for" which "tax . . . hereinbefore provided for" is a reference to the tax authorized by 19-1801. However, unlike 19-1801, the purpose of the additional tax under 19-1809 is specified with more particularity than in 19-1801. The additional tax is authorized for "the operation, management, regulation, improvement, maintenance, furnishing and equipment" of the county hospital. It is our belief that the language of 19-1809 is the most recent legislative statement as to what is meant by the language of 19-1801 regarding the "maintaining of a hospital." In other words, 19-1809 authorizes an additional tax levy, it does not authorize a tax levy for additional

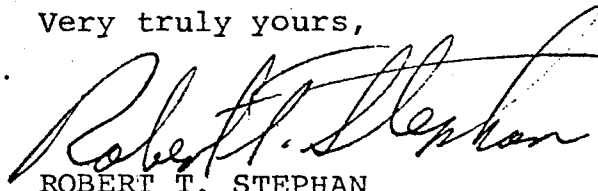
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purposes not already authorized by 19-1801. The purchase of new or replacement equipment for the operation of the hospital certainly falls within the meaning of "maintaining" as used in 19-1801, as well as 19-1809. Likewise, improvements to an existing hospital building may be accomplished under either section so long as the costs of the improvements are incurred as part of the annual hospital budget. And certainly, the hospital may utilize donations and business receipts to finance equipment and construction costs. See Attorney General Opinion No. 79-47, supra. However, if bonds are required to finance such equipment or construction, such as is authorized by K.S.A. 1979 Supp. 19-1869 which provides for the enlarging and equipping of present facilities, the question of whether to issue bonds for such additions and enlargements must be submitted to the voters of the county.

In regard to your second inquiry, prior to 1973, section 19-1809 did not require an election in order to authorize the county to levy additional taxes to support, maintain and improve the hospital. The law now requires an election authorizing the levy of an additional tax. However, the entire section only applies to counties which intend to increase their annual levy beyond that authorized by K.S.A. 1979 Supp. 19-1801. If Miami County merely continues the levy less than or equal to two (2) mills and does not increase it, the election requirements now contained in 19-1809 are not invoked. Thus, if the county is not proposing to increase its current hospital tax (approximately .5 mills) beyond the two (2) mills authorized by 19-1801, no election is required.

Therefore, we are of the opinion that the levy authorized by the voters of Miami County in 1952 constitutes continuing authority for the county to levy up to two (2) mills for hospital purposes. No additional election is required to raise the mill rate to this limit. However, if bonds are to be issued pursuant to K.S.A. 1979 Supp. 19-1869 to finance construction and equipping of an addition to the hospital, an election is required.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk

Enclosures: Exhibit A

Attorney General Opinion No. 79-47