



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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September 23, 1980

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ATTORNEY GENERAL OPINION NO. 80- 200

Steven E. Worcester, County Attorney
413 North Pomeroy Avenue
Hill City, Kansas 67642

Re: Counties and County Officers--Hospitals--Power of Board
of Trustees To Purchase Private Housing

Synopsis: The board of trustees of a county hospital may not use hospital funds to purchase real property to provide a doctor or other hospital employee with a home; the board may not use hospital funds to make a personal loan to a doctor to purchase a house; and the board may not advance rent to an individual to induce him to vacate a house for the personal use of a physician, even though housing in the area is limited. Hospital funds derived from taxes, service charges, gifts, etc., are public funds and may not be expended for other than a public purpose. Cited herein: K.S.A. 1979 Supp. 19-1804.

* * *

Dear Mr. Worcester:

Your recent letter requests the opinion of the office concerning the authority of the Board of Trustees for Graham County Hospital to expend funds, received from public and/or private sources, to assist a doctor in establishing a home in the community.

Specifically, you inquire whether a Hospital Board may:

"(1) . . . buy a house to be used to provide the doctor or any other hospital employee with a house?

"(2) . . . loan money to the doctor to buy a house?

"(3) . . . advance rent to . . . [a tenant] . . . to induce him to vacate the house so the doctor may move in (in other words, may the Hospital Board 'buy out' the lease of the present tenant to encourage him to leave)?"

You also ask whether the source of the funds would affect the answers to the aforementioned questions. You observe that there is language in Attorney General Opinion No. 79-47 which seems to indicate the board has wider discretion in expending funds received from business receipts, donations, or grants than it does in expending those funds from taxes. Although you do not state which part of the opinion caused you to reach this conclusion, the following excerpt may be the one in question:

"The hospital board is not free to use funds derived pursuant to K.S.A. 1978 Supp. 19-1801 'for support of the hospital' for the purchase or construction of a medical clinic. Likewise, the hospital board may not use funds raised pursuant to county hospital laws for the lease of a medical clinic. However, funds derived from sources other than taxes or bond issues may be used for the lease of a medical clinic."
Id. at 11.

The above cited language merely differentiates between funds raised for a specific purpose and those which can be used to further the general mandate of the board of trustees. It does not imply that the board has the discretion to expend hospital funds received from non-tax sources for other than hospital purposes. K.S.A. 1979 Supp. 19-1804(d) provides that: "[a]ll hospital funds shall be credited to the treasury of the hospital board" and K.S.A. 1979 Supp. 19-1804(f) grants the Board "exclusive control of the expenditures of all moneys collected to the credit of the hospital funds." However, the Board's control is not unlimited.

A municipality such as the Board of Trustees of a County Hospital has only such powers as are expressly granted or necessarily implied to carry out those which are expressly granted. See, e.g., City of Leavenworth, et al. v. Norton et al., 1 Kan. 432 (1863). Therefore, the board must be expressly granted the power to purchase a house for its personnel or lend the money for such a purchase or this power must be "clearly necessary to the effective exercise of powers expressly granted." See, Kansas Power Co. v. Fairbanks, Morse & Co., 142 Kan. 109, 115, (1935). The County Hospital law does not specifically grant authority

to purchase or lease a private residence for the community physician. The remaining question is whether such authority is implied in the law. For the reasons discussed below we cannot find such implication.

The board is expressly granted only the authority to expend funds for a public purpose. Although K.S.A. 19-1804 does not expressly forbid expenditure of public funds for other than a public purpose, it must be so construed. As early as 1875, Kansas law recognized the doctrine of public purpose. In State ex rel., Griffith v. Osawkee Township, 14 Kan. 419, 420 (now at pp. 322, 323), the Kansas Supreme Court refused to permit the issuance of general obligation bonds of the township for the purpose of loaning money to needy farmers to purchase seed grain. [Note also cases cited therein at 323.]

On matters regarding aid to physicians, this office has at least twice invoked the public purpose doctrine. In Attorney General Opinion No. 77-269, the Attorney General concluded:

"[U]se of the funds [industrial revenue levy pursuant to K.S.A. 12-1617h] to pay rental for an office for the practice of medicine, and to pay overhead expenses of the practice, are not permissible uses of the fund."

And in Attorney General Opinion No. 77-315, citing the language of Attorney General Opinion No. 77-269, the Attorney General opined that county hospital funds may not be used to provide a guarantee to the personal net income of physicians from their private practice. Therein, Attorney General Schneider stated:

"Clearly the funds obligated . . . [under the proposed agreement] are devoted to no public purpose, but are to be applied solely to supplement and augment the personal income of private individuals from their private professional medical practice. In my judgement, this is entirely impermissible use of public funds for a private purpose, and is not authorized by law."

With regard to the purchase of real estate, this office has opined that a municipality may not lawfully purchase real estate in order to make a gift of the property to a private enterprise. See Kansas Attorney General Opinion No. 80-19.

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Although we reaffirm the principle that the expenditure of public funds must be for a public purpose, it could be argued that providing housing for hospital personnel with necessary housing is a public (hospital) purpose within the meaning of the statute. There are instances when providing hospital personnel may be a public purpose. For example, hospital buildings may include housing for emergency room personnel. However, housing for such a purpose can be distinguished in several ways from the purchase contemplated by the board.

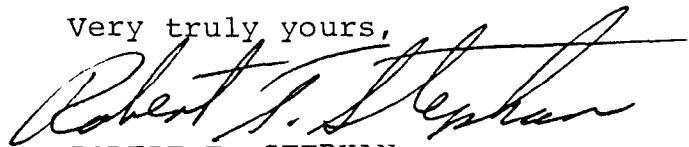
First, it is for the convenience of the hospital that housing for emergency personnel is purchased or leased, rather than for a particular individual. Second, the hospital may need to summon emergency personnel on short notice and quarters close to the hospital shortens response time. This adds to efficiency and possibly saves lives. Last, such housing would be for continued hospital use, whereas housing purchased for one doctor may not be suitable or necessary for the next doctor.

We appreciate that housing may be in short supply in Graham County and that a doctor and his or her family will need a home in the community where the hospital is located. Likewise, we understand the difficulty many citizens have affording the costs of a suitable home. However, it is our opinion that these factors do not, as a matter of law, merit declaring such private transactions as satisfying a public purpose.

Due to our conclusion regarding the lack of public purpose in the three proposals you have made, we do not labor to discuss each of them separately since all are essentially different means to the same end--a purpose for which the county hospital board of trustees may not expend public funds.

Therefore, it is our opinion that the board of trustees of a county hospital may not use hospital funds to purchase real property to provide a doctor or other hospital employee with a home; the board may not use hospital funds to make a personal loan to a doctor to purchase a house; and the board may not advance rent to an individual to induce him to vacate a house for the personal use of a physician.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General