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February 18, 1981

ATTORNEY GENERAL OPINION NO. 81-49

Mr. Robert G. Suelter  
2018 Forest Avenue  
P.O. Box 2026  
Great Bend, Kansas 67530

Re: Counties and County Officers -- Mental Health Centers  
-- Purchase of a Building by Mental Health Center

Synopsis: The governing board of a mental health center may not enter into a mortgage agreement to purchase a building for the use of the mental health center. A lease with an option to purchase may be entered into by the governing board, but such agreement may not obligate the board or the county to purchase the property. Cited herein: K.S.A. 1980 Supp. 19-1801, 19-4001, 19-4004.

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Dear Mr. Suelter:

As attorney for the Center for Counseling and Consultation, a mental health center organized under the provisions of K.S.A. 1980 Supp. 19-4001 et seq., you inquire whether the governing body of the center may purchase and mortgage a building for use by the center. You also inquire in the alternative whether a lease-purchase agreement could be used to acquire the building.

Mr. Robert G. Suelter  
Page Two  
February 18, 1981

K.S.A. 1980 Supp. 19-4004 provides the authority to purchase buildings to be used by a mental health center. It states in pertinent part thus:

"[T]o provide for the purchase of or the construction of facilities for the community mental health center, and/or facility for the mentally retarded, the board or boards of county commissioners may, upon petition of the governing board, levy an annual tax on all taxable tangible property in their county, which tax shall not exceed the limitation prescribed by K.S.A. 1979 Supp. 79-1947, and to issue and sell general obligation bonds of such county, for the purpose of creating and providing a special fund to be used in acquiring a site for, and the building, equipping, repairing, remodeling and furnishing of a community mental health center, and/or facilities for the mentally retarded, or for any one or more of such purposes. . . . Title to the building or buildings of the community mental health center, and/or facility for the mentally retarded, shall vest in the governing board which is responsible for the maintenance and operation of the facilities if a combination of counties has established the center, but, if only one county has established the mental health center or facilities for the mentally retarded, title shall vest in the board of county commissioners of such county."

In Attorney General Opinion No. 76-176, Attorney General Schneider opined that the governing board of a community mental health center created pursuant to K.S.A. 1980 Supp. 19-4001 et seq., had authority "to make final decisions regarding acquisition of property for establishment and operation of the center and the conduct of its programs." Id. at 3. In Attorney General Opinion No. 76-149, the Kansas Attorney General concluded that the governing body of a community mental retardation center established pursuant to K.S.A. 1980 Supp. 19-4001 et seq., was not subject to the Cash Basis Law. However, in a subsequent opinion, Attorney General Opinion No. 79-90, this office concluded that the governing body of the community mental health center had "no authority to borrow money from a financial institution to purchase or construct a building." Id. at 1.

Collectively, then, these prior opinions indicate that, although the governing body of the center may not be subject to the limitations of the Cash-Basis Law and has decision-making authority over the acquisition and operation of necessary facilities, the source of funds for such

Mr. Robert G. Suelter  
Page Three  
February 18, 1981

activities can only be derived from those sources enumerated in the statute. (See Kansas Attorney General Opinion No. 79-90, attached.) We find no basis for disagreement with these prior opinions.

According to Opinion No. 76-176, supra, if funds are raised by a county or counties for purchase or construction of a mental health or retardation facility, the governing board of the center may expend such funds for that purpose. But, where a financing method is proposed which creates obligations on the county or its administrative body, i.e., the center's governing board, the methods to be utilized must be limited to those enunciated in the law. K.S.A. 1980 Supp. 19-4001 provides that community mental health or retardation centers are to be financed "according to the provisions of this act [K.S.A. 19-4001 et seq., as amended]." It is a commonly accepted rule of statutory interpretation that the powers of administrative bodies are limited to those expressly given or necessarily implied from the laws creating the body and enabling its activities. 1 Am.Jur.2d Administrative Law §70 (1962), citing Bennett v. Corp. Comm'n., 157 Kan. 589 (1943). Cf. Wichita Pub. Schools Employees Union v. Smith, 194 Kan. 2 (1964) (school boards). We are, therefore, unable to find legislative intent that the governing bodies of community mental health or retardation centers are authorized to seek and contract for novel methods of private funding for capital improvement projects.

With regard to the lease-purchase agreement, we would observe that the governing body has a duty to deliver mental health and retardation services to the community. Where it becomes necessary to lease space and equipment to perform this duty the power to do so is "necessarily implied" from the laws creating the body. See, 1 Am.Jur.2d Administrative Law §70 (1962). If the funds necessary for such leases are available to the governing body, such leases may be lawfully entered into.

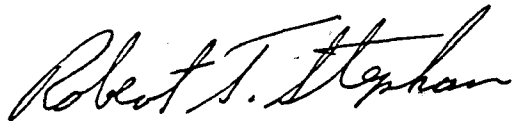
A lease with an option to buy real property, or a lease-purchase agreement, would also be permissible to the extent that the option is provided without obligation to the board or the county. See, generally, Kansas Attorney General Opinion No. 79-63. However, where the agreement creates an obligation to purchase, the funding for the purchase must come from county sources and is therefore an obligation of the county to be performed in accordance with the provisions of K.S.A. 1980 Supp. 19-4004. In other words, where the lease-purchase agreement amounts to an installment sale contract or otherwise constitutes an obligation to purchase, the mental health center board lacks the requisite authority to enter into such agreement, unless the county or counties have provided the funds pursuant to K.S.A. 1980 Supp. 19-4004.

Mr. Robert G. Suelter  
Page Four  
February 18, 1981

Generally speaking, K.S.A. 1980 Supp. 19-4001 et seq., is a statutory scheme which contemplates a significant role for county government in the acquisition of capital improvements for the mental health center. Briefly stated, the county or counties fund the acquisition; the center petitions for the funds and expends them for the purchase or construction. In this respect, the relationship of a county to a county hospital created pursuant to K.S.A. 1980 Supp. 19-1801 et seq., is similar to the relationship of a county to a mental health or retardation center created pursuant to K.S.A. 1980 Supp. 19-4001 et seq. See Kansas Attorney General Opinion No. 81-37.

In summary, the governing board of a mental health center may not enter into a mortgage agreement to purchase a building for the use of the mental health center. A lease with an option to purchase may be entered into by the governing board, but such agreement may not obligate the board or the county to purchase the property.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:phf  
Enclosure:

Attorney General Opinion No. 79-90