



STATE OF KANSAS

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March 11, 1981

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ATTORNEY GENERAL OPINION NO. 81-64

Mr. Granville M. Bush
111 East Avenue North
Lyons, Kansas 67554

Re: Townships and Township Officers -- Hospitals --
Construction of Buildings

Synopsis: A township hospital district operating under the authority of K.S.A. 80-2113 et seq. which operates a home for the aged has no authority to make capital improvements using commingled business receipts and tax moneys raised for operation and maintenance. In addition, K.S.A. 80-2124 is not applicable to capital improvements to a home for the aged. Cited herein: K.S.A. 80-2113, 80-2117, 80-2124, K.S.A. 1980 Supp. 80-2125, 80-2127, 80-2128.

* * *

Dear Mr. Bush:

You advise that Hospital District No. 2, Rice County, Kansas, operates a home for the aged under the authority of K.S.A. 80-2113 et seq. The home for the aged, known as Sandstone Heights, is the only district facility as the district does not operate a hospital. The district board of directors proposes to build a garage with moneys from the operation and maintenance fund collected pursuant to the tax imposed by K.S.A. 1980 Supp. 80-2125 and business receipts. The garage is proposed to be built at the Sandstone Heights site. As counsel for the district, you ask if the board may expend moneys from the operating fund for the proposed addition and if so, must the board comply with the provisions of K.S.A. 80-2124 to construct such a garage.

K.S.A. 80-2117 authorizes the hospital district board to "maintain, operate, improve, equip, lease, rent, enlarge,

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construct, reconstruct or acquire existing privately-owned facilities for a public hospital or a home for the aged."

As previously noted, K.S.A. 1980 Supp. 80-2125 authorizes the levy of a tax for the operation and maintenance of a home for the aged. Unfortunately, the statutes applicable to the hospital district make no mention of a method of funding for the capital improvements for a home for the aged authorized in K.S.A. 80-2117. Conspicuously absent from K.S.A. 1980 Supp. 80-2127 (the section authorizing the levy of a tax for the hospital building fund) and K.S.A. 80-2128 (the section authorizing the issuance of bonds for hospital construction), is any reference to funding for constructing, enlarging or making additions to homes for the aged. In view of the fact that the district no longer operates a hospital, it would be difficult to argue that the immediately preceding statutes authorize a tax levy or bond issue for a capital improvement in connection with a hospital. Indeed, the fact that no hospital is operated by the district raises serious questions about the operation of the home for the aged, since the home is to be operated "in connection with" the hospital. See K.S.A. 1980 Supp. 80-2125.

Case law and opinions of this office have long recognized the distinction between capital improvements and operating expenses. See e.g., Smith v. Haney 73 Kan. 506, 509 (1906) and VII Opinions of the Attorney General 1143 (Kan. 1972). Indeed, the legislature provides separate statutory authorization for each and requires the opportunity for a public election where capital improvements are to be made. See, e.g., K.S.A. 1980 Supp. 80-2127. In the absence of statutory authorization to use tax moneys raised for operation of the home for the construction of additions to the home for the aged, we must conclude that the district lacks authority to expend business receipts and tax dollars commingled in the operation and maintenance fund for capital improvements. See Kan. Const., Art. 11, §5 and Kansas Attorney General Opinion Nos. 79-90, 80-176, 81-37 and 81-49 limiting various types of hospital districts to those means of funding specifically designated by statute.

In response to your second inquiry, although the issue is now moot because of the answer to the first question, we would conclude that K.S.A. 80-2124 is not applicable to the construction of an addition to the home for the aged. K.S.A. 80-2124, unlike K.S.A. 1980 Supp. 80-2127 and K.S.A. 80-2128, makes no mention of the home for the aged and hence is, by its terms, restricted to improvements to township hospitals.

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In sum, a township hospital district operating under the authority of K.S.A. 80-2113 et seq. which operates a home for the aged has no authority to make capital improvements using commingled business receipts and tax money raised for operation and maintenance. In addition, K.S.A. 80-2124 is not applicable to capital improvements to a home for the aged.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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Deputy Attorney General

RTS:BJs:hle