



STATE OF KANSAS

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July 22, 1981

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ATTORNEY GENERAL OPINION NO. 81-171

The Honorable Kalo Hineman
State Representative, 117th District
R.F.D.
Dighton, Kansas 67839

Re: Counties--Mental Health/Mentally Retarded Services--
Contracts with Non-Profit Corporations

Synopsis: A county is empowered by K.S.A. 1980 Supp. 19-4007 to contract with one or more non-profit corporations for the providing of services to the mentally retarded, and to fund such contracts from the proceeds of the tax levied pursuant to K.S.A. 1980 Supp. 19-4004. The payment of such moneys is not limited by the provisions of K.S.A. 19-4009, which proscribes the imposition of a tax levy for such purposes only in the situation where the county has established a mental health center, as opposed to contracting for mental retardation services. Cited herein: K.S.A. 1980 Supp. 19-4001, 19-4002, 19-4004, 19-4007, K.S.A. 19-4009, K.S.A. 1980 Supp. 79-1947.

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Dear Representative Hineman:

As state representative for the 117th District, which includes a portion of Finney county, you request our opinion on a matter which concerns the ability of the Finney County Commission to provide services for mentally retarded persons. Specifically, you wish to know whether the county may contract with two different non-profit corporations for the rendering of such services to adults and pre-schoolers. Although you do not so state, we would presume that school-age persons are assisted by the various school districts in the county.

The Honorable Kalo Hineman
Page Two
July 22, 1981

It appears clear from the statutes that a county has several options in providing for its residents who are mentally retarded. In particular, Article 40 of Chapter 19 of the Kansas Statutes Annotated provides that a county may itself establish a community facility for the mentally retarded (K.S.A. 1980 Supp. 19-4001) or, if it should be determined to be more practicable, contract with a non-profit corporation for the providing of such services [K.S.A. 1980 Supp. 19-4007(a)] or, as a third alternative, transfer funds to a state agency which currently operates such programs [K.S.A. 1980 Supp. 19-4007(b)]. Such contracts may be made by the county itself, or through a mental retardation governing board which the county may establish [K.S.A. 1980 Supp. 19-4002(a)].

In either event, contracts between a county and such a corporation may provide, pursuant to K.S.A. 1980 Supp. 19-4001, for

"[p]re-school, day care, work activity, sheltered workshops, sheltered domiciles, parent and community education and, in collaboration with other agencies when practical, clinical services, rehabilitation services, in-service training for students entering professions dealing with the above aspects of mental retardation, information and research."

No restriction exists, it should be noted, on the number of contracts which a county may make with such corporations in any one year. Funding of such contracts is provided for by K.S.A. 1980 Supp. 19-4004, which authorizes a levy of up to .75 mill (as set by K.S.A. 1980 Supp. 79-1947), for mental retardation services.

Finally, we would also note that additional requirements exist in K.S.A. 1980 Supp. 19-4007(a) which must be met by a non-profit corporation rendering such services. These include: an obligation to provide services to all, regardless of the ability to pay; financial reporting requirements; and, if the corporation is organized to receive public funds, the approval of the secretary of social and rehabilitation services. Presumably, this latter requirement would be met through the licensing procedures of that department. We are informed that both of the corporations involved here are so licensed.

From the above, it would appear that there exists no statutory barrier to Finney County's entering into separate contracts with different non-profit corporations for the rendering of mental retardation services, providing that the other requirements cited above are also met. However, we are informed that a question has been raised as to the applicability of K.S.A. 19-4009. That statute states:

The Honorable Kalo Hineman
Page Three
July 22, 1981

"Nothing contained in this act shall be construed as repealing any existing law nor as affecting any mental health center or facilities for the mentally retarded established by any county under any other law prior to the effective date of this act except as herein otherwise specifically provided; but no county which has heretofore established or shall hereafter establish under any other law a mental health center or facilities for the mentally retarded shall make a tax levy under such other law for a mental health center or facilities for the mentally retarded if it shall establish either singly, or jointly a mental health center under the provisions of this act." (Emphasis added.)

While admittedly not a model of statutory clarity, in our opinion this statute does not apply here for two reasons.

First, the statute speaks to the situation where the county has "established" or "shall hereafter establish" facilities for the mentally retarded. As noted above, however, the establishment by a county of such facilities is but one option at its disposal and in fact was not employed here, where the services are to be provided by contract. As it is to be presumed that the specific inclusion of one method implicatedly excludes all others [In re Olander, 213 Kan. 282 (1973)], a tax levy may be made where a non-profit corporation, rather than the county itself, is actually providing the services.

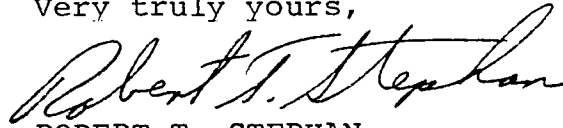
Second, it may be noted that the last clause of the statute acts to make the prohibition effective "if [the county] shall establish either singly or jointly a mental health center under the provisions of this act." Again, using the principle cited above, it is to be presumed that the omission of mental retardation facilities or services is for a purpose, leaving the statute inapplicable in cases as here, where it is these latter type of services which are at issue. A prior opinion of this office reaching this same conclusion, No. 73-175, is reaffirmed.

In conclusion, a county is empowered by K.S.A. 1980 Supp. 19-4007 to contract with one or more non-profit corporations for the providing of services to the mentally retarded, and to fund such contracts from the proceeds of the tax levied pursuant to K.S.A. 1980 Supp. 19-4004. The payment of such moneys is not limited by the provisions of K.S.A. 19-4009, which proscribes the

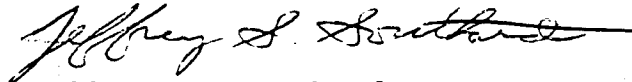
The Honorable Kalo Hineman
Page Four
July 22, 1981

imposition of a tax levy for such purposes only in the situation where the county has established a mental health center, as opposed to contracting for mental retardation services.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:jm