



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 196

Mr. Darrel E. Johnson
Attorney at Law
701 Vilymaca St.
Elkhart, Kansas 67950

Re: Counties -- County Attorney -- Duty to Collect
Delinquent County Hospital Accounts

Synopsis: A county attorney has a duty to collect delinquent
county hospital accounts and, therefore, may not
receive additional compensation for such actions.

Suits filed to collect delinquent county hospital
accounts must be filed in the name of the board of
county commissioners. Cited herein: K.S.A. 19-105,
19-702, 19-704.

* * *

Dear Mr. Johnson:

You inquire, in your capacity as Morton County Attorney, whether
you may collect delinquent hospital accounts on behalf of the
county-operated hospital as private counsel and receive com-
pensation for these collection activities in addition to your
regular county attorney salary. You state that you and the
Morton County Hospital Board have entered into an agreement
whereby you would handle these accounts as a private attorney
for a specified fee, and that the Board of County Commissioners
is aware of the arrangement.

The general duties of county attorney are set forth in K.S.A.
19-702:

"It shall be the duty of the county attorney
to appear in the several courts of their re-
spective counties and prosecute or defend on

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behalf of the people all suits, applications or motions, civil or criminal, arising under the laws of this state, in which the state or their county is a party or interested."

Further duties are prescribed in K.S.A. 19-704:

"The county attorney shall without fee or reward, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the county is interested, or relating to the duties of such board or officers, in which the state or county may have an interest."

This office and former Attorneys General in Attorney General Opinions, including Vol. II, p.77 and 77-144, have concurred that the collection of delinquent county hospital accounts falls within the scope of the county attorney's duties and, therefore, do not entitle him or her to additional remuneration. We reaffirm this conclusion. Copies of these opinions are enclosed.

You also inquire as to whether the board of county commissioners may delegate the authority to file suits for collection of delinquent accounts to the hospital board of trustees or whether the hospital board of trustees has the power to file such suits in its own right.

K.S.A. 1980 Supp. 19-1804(f) designates the powers of the board of hospital trustees. It provides in part:

"The board shall have the exclusive control of the expenditures of all moneys collected to the credit of the hospital funds

"The board shall be charged with the business-like supervision, care and custody of all hospital property."

In Seltmann v. Board of County Commissioners, 212 Kan. 805 (1973), suit was brought against the board of county commissioners and the hospital board of trustees to enjoin the county commissioners from constructing a medical clinic without first obtaining approval of the electors of the county. The Kansas Supreme Court concluded:

"[T]he board of trustees of the hospital was vitally interested in the issue presented

in the case. Under the provisions of K.S.A. 1971 Supp. 19-18,117 and 19-18,118, the governing body of a county hospital is granted authority to construct a medical clinic to use in connection with the hospital The trustees were proper parties in the action under the definition of 'proper parties' stated in Cities Service Oil Co. v. Kronewitter, 199 Kan 288, 428 P.2d 804:

"'Proper parties are those without whom the cause might proceed but whose presence will allow a judgment more clearly to settle the controversy among all the parties'
(Syl. ¶1.)" Id. at 808.

Thus, because the hospital board may have a vital interest in collecting the delinquent hospital accounts, it may be deemed a "proper party" to such an action. However, the board of county commissioners is an indispensable party and must be included for the action to be maintained.

The county hospital is an arm of county government and must defer to the authority and control of the county governing body regarding legal proceedings arising out of the hospital's operations. As former Attorney General John Anderson stated:

"We are of the opinion that the State has not created the Board of trustees a corporate body having the power to sue and be sued. We feel the board is an administrative arm of the county, possessing only such powers as are conferred by statute, which administers according to statute what is essentially a county hospital. Accordingly, legal proceedings arising out of hospital operation are proceedings of the county, and not of the board of trustees." Opinions of the Attorney General, Vol. II, p. 77.

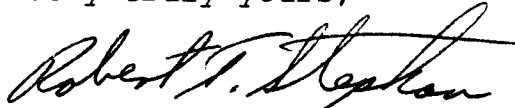
Similarly, former Attorney General Robert Londerholm concluded in an opinion of May 7, 1968, that "the county commissioners must first approve the prosecution of any law suit for the collection of delinquent hospital accounts receivable."

These prior opinions are persuasive here, and it is our opinion that all suits brought to collect delinquent accounts for the county hospital must be brought on behalf of the county, in the name of the board of county commissioners. (See K.S.A. 19-105.) Accordingly, such actions must be brought by the county attorney, as required by K.S.A. 19-702, which precludes

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the county attorney's receipt of additional remuneration therefor, as we previously concluded herein.

Very truly yours,



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Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle