

STATE OF KANSAS

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February 8, 1982

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ATTORNEY GENERAL OPINION NO. 82- 32

Ms. Susan Marshall  
Lincoln County Attorney  
P. O. Box 36  
Lincoln, Kansas 67455

Re: Counties and County Officers -- Hospitals -- Power  
of Board of Trustees to Finance Medical Education

Synopsis: The county hospital enabling laws do not authorize a hospital board of trustees to expend hospital funds to pay for the education of a medical student for the purpose of obtaining that student's promise to practice in a certain area. However, county home rule power pursuant to K.S.A. 19-101a may be used to enable the county hospital board of trustees to contract with a medical student for future services. Cited herein: K.S.A. 19-101a, 19-1801 and 19-1804.

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Dear Ms. Marshall:

You request our opinion regarding the authority of the Lincoln County Hospital Board of Trustees to expend hospital funds to give or loan money to a medical student, in order to obtain a promise from that student to practice in your area upon graduation and completion of internship and residency requirements. In addition, you ask about several alternative methods for accomplishing this objective. Because your questions all pertain to the ability of the board of trustees to expend hospital funds for the contemplated purpose, we will determine whether Kansas law authorizes this action before entering into any discussion of your specific questions.

A county hospital board of trustees is a governmental agency and, as such, has only those powers expressly conferred by law and those necessary to make effective the powers expressly

conferred. See Murray v. State Board of Regents, 194 Kan. 686 (1965), and Kansas Power Co. v. Fairbanks, Morse, & Co., 142 Kan. 109 (1935). Express authority for undertaking the action in question does not exist, but, as you note, K.S.A. 19-1804 does allow the board to "expend funds deemed necessary in the recruitment of professional staff." This language was added to K.S.A. 19-1804 and to the enabling statutes for city, township and district hospitals by L. 1972, ch. 44. An examination of the legislative history of this enactment shows no intent to allow hospital boards to finance the education of medical students, in return for a promise to practice in a certain geographical area. The minutes of the Senate Public Health and Welfare Committee on February 2, 1972 show the following:

"Chairman Thomas advised that the committee would break from the hearings on Substitute for Senate Bill No. 291 to hear from Senator Smith on S.B. 584 - AN ACT CONCERNING CITY, TOWNSHIP, COUNTY AND DISTRICT HOSPITALS. Senator Smith advised that even though this bill is lengthy, it basically only makes one change in the law and that is to allow hospitals to spend funds for recruitment of hospital personnel. Senator Janssen asked if this could open the way for hospitals to pay a portion or all of a student's expenses during medical school as an enticement to come back to the hospital. Senator Smith does not envision [sic] this."

Additionally, we note that the arrangement contemplated here is not the normal method for recruitment of professional staff. Attorney General Schneider notes in Attorney General Opinion No. 77-315, that recruiting expenses normally include "such items as travel for interviews, lodging and other subsistence, and perhaps moving expenses and like costs which the prospective employer agrees to defray in order to encourage and facilitate the recruitment of professional staff." Because these other methods of effectively exercising the express power granted by K.S.A. 19-1804 are available, we cannot say as a matter of law that the expenditure of county hospital funds to finance a medical student's education, in return for the student's promise to practice in a certain area, is a power clearly necessary to the effective exercise of the power expressly granted. This determination makes it unnecessary to discuss whether medical students fit within the term "professional staff."

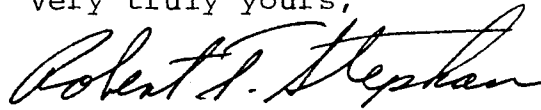
Since we have concluded that the hospital board of trustees does not have by statute the authority to perform the action

Susan Marshall  
Page Three

in question, it is necessary to point out that such power may reside in the county through use of its home rule power. We determined in Attorney General Opinion 81-37 that a board of county commissioners may empower the hospital board of trustees to do certain acts, when those acts are within the county's home rule power granted by K.S.A. 19-101a. Because the action contemplated here does not appear to be contrary to any uniformly applicable act of the legislature, it would be within the authority of the board of county commissioners to authorize the expenditure of county hospital funds for the purpose of giving or loaning sufficient funds to a medical student to obtain that student's promise to practice in a certain area.

Since the above analysis seems to answer the substance of your questions, they will not be addressed individually. To summarize, it is our opinion that the county hospital enabling laws do not authorize a county hospital board of trustees to expend hospital funds to pay for the education of a medical student for the purpose of obtaining that student's promise to practice in a certain area. However, county home rule power pursuant to K.S.A. 19-101a may be used to enable the county hospital board of trustees to contract with a medical student for future services.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:hle