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April 14, 1982

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ATTORNEY GENERAL OPINION NO. 82- 85

Steven E. Worcester
Graham County Attorney
413 North Pomeroy Avenue
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Re: Counties and County Officers -- Ambulance Service --
Limitations on Expenditure of Tax Proceeds

Synopsis: A county hospital established pursuant to K.S.A. 19-1801 et seq. does not have express or implied authority to provide an ambulance service. Pursuant to K.S.A. 19-261, a county ambulance service is the province of the board of county commissioners, and the expenses incurred in connection therewith are to be paid from the county general fund, which necessitates the oversight and control of such expenses by the board of county commissioners.

Therefore, the ambulance service being provided by the Graham County Hospital with the proceeds of a tax levied under K.S.A. 19-262 is ultra vires, and all such moneys, together with equipment purchased therewith, must be returned to the control of the Graham County Board of County Commissioners.

In addition, since K.S.A. 19-261 requires that any taxing district that has provided ambulance service in the county be reimbursed therefore, the Graham County Rescue Squad (funded by the Graham County Fire Department) should be reimbursed for the ambulance service it has provided. Cited herein: K.S.A. 12-105a, 12-105b, 19-101, 19-101a, 19-212, 19-229, 19-261, 19-262, 19-263b, 19-1801, 19-1802, 19-1804, 77-201, 79-2934, Kan. Const., Art. 11, §5.

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Dear Mr. Worcester:

In your correspondence dated February 8, 1982, you state that the Graham County Board of County Commissioners is considering restructuring the ambulance service for Graham County. Presently, the Graham County Hospital receives the proceeds from a tax levied specifically for ambulance service. This tax levy was authorized July 18, 1977, pursuant to resolution of the board of county commissioners. Further, according to the Graham County budget, the subject tax levy is imposed pursuant to K.S.A. 19-262, which authorizes the board of county commissioners to levy a tax for ambulance purposes. The proceeds from this tax levy have been transferred to the control of the Graham County Hospital Board of Trustees to be used for ambulance purposes. However, hospital ambulance service moneys have accumulated in the hospital ambulance account, apparently because the Graham County Rescue Squad (funded by the Graham County Fire Department) has performed much of the ambulance service for the county. The proposed restructuring would involve the establishment of a county ambulance service and fund independent of the county hospital and county fire department.

Specifically, you have raised the following questions:

1. May the accumulated moneys in the county hospital ambulance account be transferred to the proposed county ambulance service?
2. May county hospital ambulance equipment be transferred to the proposed county ambulance service?
3. May proceeds from the county hospital ambulance service tax levy for the current year be transferred to the proposed county ambulance service?
4. Assuming that the proposed county ambulance service and fund is established, may the county hospital receive moneys from the county ambulance fund to provide a hospital ambulance capability?

The establishment and operation of county ambulance services is statutorily authorized and governed by K.S.A. 19-261 through 19-263b. K.S.A. 19-261 authorizes a board of county commissioners to provide ambulance service as a county function, and specific authority for administration of the ambulance service by the board of county commissioners is found at K.S.A. 19-262, which requires the board to set standards for the overall operation of the ambulance service. Hence, there is no doubt that providing ambulance service is within the scope of county business and must be administered by the board of county commissioners pursuant to these particular

statutes, together with the general powers conferred in K.S.A. 19-101, 19-101a, 19-212 First, Fifth and Eleventh, and 19-229.

Clearly, then, pursuant to the authority conferred by K.S.A. 19-261 and 19-262, the board of county commissioners is charged with the responsibility of administering any ambulance service established under these statutes. K.S.A. 19-261 allows the board of county commissioners to administer an ambulance service or to contract with "any city, person, firm, or corporation for the furnishing of ambulance services . . . for such compensation as may be agreed upon which shall be payable from the county general fund." (Emphasis added.) Thus, by virtue of K.S.A. 19-261 and 19-262, the financial support of an ambulance service established and operated pursuant to these statutes is clearly an obligation of the county's general fund. Irrespective of whether the board of county commissioners provides directly for the operation of the ambulance service or provides for such operation by contract, expenses attributable thereto are payable from the county general fund. This places the responsibility for oversight and control of such expenses solely on the board of county commissioners.

Accordingly, the payment of such expenses is required to comply with K.S.A. 12-105a and 12-105b (Uniform Procedure for Payment of Claims and Other Indebtedness by Municipalities). The oversight responsibility imposed by K.S.A. 12-105b contemplates that each claim made on the county general fund for services rendered will be examined by the county's governing body, so that the public's interests may be protected. However, this procedure is not being followed in Graham County.

Presently, the Graham County Board of County Commissioners makes an annual appropriation to the Graham County Hospital for ambulance service purposes. The board of county commissioners does not exercise any control or oversight regarding the expenditure of moneys for ambulance service purposes. In effect, all moneys derived from the tax levied pursuant to K.S.A. 19-261 are turned over to the board of hospital trustees, with no restrictions on the expenditure of such moneys. The moneys so received by the hospital are placed in an account of the hospital fund, and the provisions of K.S.A. 19-1802 and 19-1804(d) make it abundantly clear that moneys in this fund are under the exclusive jurisdiction and control of the board of hospital trustees.

In our judgment, therefore, this current practice is contrary to the statutory requirements noted above, because expenses for ambulance service are to be paid from the county general fund. Also relevant here is K.S.A. 19-229, which states:

"The boards of county commissioners of the several counties of this state shall have exclusive control of all expenditures accruing, either in the publication of the delinquent tax lists, treasurer's notices, county printing, or any other county expenditures."

When K.S.A. 19-229 is read in conjunction with the general powers conferred in K.S.A. 19-212, one may conclude that there is little outside the scope of county commissioners' powers regarding financial matters of the county. See Hackler v. Board of County Commissioners, 189 Kan. 697 (1962). Hence, it is the opinion of this office that the Graham County Hospital Board of Trustees is acting ultra vires by administering the hospital ambulance service fund without oversight and control by the board of county commissioners pursuant to K.S.A. 12-105a, 12-105b, 19-212, 19-229, 19-261 and 19-262.

With this in mind, we shall address each of the questions raised in your opinion request.

1. May the accumulated moneys in the county hospital ambulance account be transferred to the proposed county ambulance service?

By virtue of the requirements of K.S.A. 19-261, 19-262 and 19-229, the accumulated moneys in the hospital ambulance account must be transferred back to the county general fund, under control of the board of county commissioners. Further, because the subject moneys were raised pursuant to a tax levy for ambulance service, the moneys must be expended only for such purpose. Kan. Const., Art. 11, §5; K.S.A. 79-2934.

2. May county hospital ambulance equipment be transferred to the proposed county ambulance service?

Consistent with our response to your first question, we believe any hospital ambulance equipment that has been purchased with moneys from the hospital ambulance service tax levy must be returned to the control of the board of county commissioners.

3. May proceeds from the county hospital ambulance service tax levy for the current year be transferred to the proposed county ambulance service?

The answer to this question has been suggested by our two previous responses. K.S.A. 19-261 states that compensation for ambulance service is to be paid from the county general fund, irrespective of whether the county or some other statutorily authorized entity provides ambulance service. Hence, all proceeds from the ambulance service tax levy must be placed in the county general fund and expended only for

ambulance purposes pursuant to the Kansas Constitution and the so-called Budget Law. Kan. Const., Art. 11, §5; K.S.A. 79-2934.

4. Assuming that the proposed county ambulance service and fund is established, may the county hospital receive moneys from the county ambulance fund to provide a county ambulance capability?

Given present statutory constraints, we cannot provide an affirmative response to this question. We again note that existing statutes clearly make the provision of a county ambulance service an obligation of the county general fund, thereby precluding the establishment of a separate "county ambulance fund" contemplated by your question. Moreover, the Graham County Hospital is not statutorily authorized to maintain an ambulance service as a hospital function. We are unaware of any statute which specifically confers such power, and from our review of the various statutes governing county hospitals (K.S.A. 19-1801 et seq.), we have been unable to imply the existence of such authority. As stated in Murray v. State Board of Regents, 194 Kan. 686, 689, 690 (1965):

"Governmental agencies are creatures of the legislature, and can exercise only such powers as are expressly conferred by law and those necessary to make effective the powers expressly conferred. (State, ex rel., v. City of Kansas City, 181 Kan. 870, 317 P.2d 806; State, ex rel., v. City of Overland Park, 192 Kan. 654, 391 P.2d 128)."

Kansas cases have consistently limited the determination of implied powers to situations where, without them, the governmental agency would have no way to carry out its express statutory powers. See, e.g., Edwards County Commissioners v. Simmons, 159 Kan. 41 (1944); Womer v. Aldridge, 155 Kan. 446 (1942); The State, ex rel., v. Wooster, 111 Kan. 830 (1922); State, ex rel., v. Davis, 114 Kan. 270 (1923); The State, ex rel., v. Younkin, 108 Kan. 634 (1921); Young v. Regents of State University, 87 Kan. 239 (1912); and Brown County v. Barnett, 14 Kan. 627 (1875).

We do not believe there is any power expressly granted county hospitals under K.S.A. 19-1801 et seq. which cannot be effectively exercised in the absence of an implication of authority to provide ambulance service. Our conclusion is buttressed by the fact that K.S.A. 19-261 vests in the board of county commissioners the authority to provide ambulance services in the county. Hence, we are unable to imply the existence of identical authority in a county hospital's board of trustees.

Further, we find no statutory authorization for the hospital to receive an appropriation from the county to be expended for ambulance purposes as deemed appropriate by hospital staff or the hospital board of trustees. However, K.S.A. 19-1801 et seq. do not have uniform application to all counties. Thus, we note the authority of the Graham County Board of County Commissioners to adopt a charter resolution, pursuant to K.S.A. 19-101b, exempting the county from those provisions of K.S.A. 19-1801 et seq. which are applicable to Graham County and providing "substitute and additional provisions" in lieu thereof. In this case, such substitute and additional provisions could allow the Graham County Hospital to provide ambulance service as a necessary incident of its health care duties.

In our judgment, though, such action is not alone sufficient to permit such ambulance service to be provided pursuant to a contractual arrangement with the board of county commissioners. K.S.A. 19-261 authorizes the board of county commissioners to contract with any "city, person, firm, or corporation" for the providing of ambulance service, but we are of the opinion that Graham County Hospital may not be reasonably construed as one of the designated entities authorized by K.S.A. 19-261 to provide ambulance service. Although K.S.A. 77-201, Thirteenth, permits construction of "person" so as to include "bodies politic and corporate," a county hospital is not such a body. Therefore, since K.S.A. 19-261 et seq. also have nonuniform application to counties, the Graham County Board of Commissioners would need to adopt a charter resolution which would permit a contract under K.S.A. 19-261 with Graham County Hospital to provide ambulance service. Of course, such a contractual relationship would still require strict adherence to the procedures prescribed in K.S.A. 12-105a and 12-105b regarding payment of claims for ambulance service.

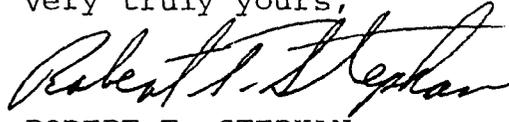
Due to the nonuniform applicability of K.S.A. 19-261 et seq. and K.S.A. 19-1801 et seq., the Graham County Board of County Commissioners may want to consider other alternative uses of its home rule authority to exempt the county from these statutory provisions and provide substitute and additional requirements that are particularly suited for Graham County. However, it is not appropriate for us to speculate in this opinion as to the possible uses of such home rule powers, except as they pertain specifically to the questions you have raised.

Finally, it should be noted that, according to your correspondence the Graham County Rescue Squad (funded by the Graham County Fire Department) has been providing ambulance service

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for the county. K.S.A. 19-261 requires reimbursement to any taxing district that provides ambulance service. This would appear to require reimbursement to the Graham County Rescue Squad for ambulance services that entity has provided.

Very truly yours,



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ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:hle