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August 16, 1984

ATTORNEY GENERAL OPINION NO. 84- 85

Terry J. Solander  
Loughridge & Solander  
503 South Oak Street  
Garnett, Kansas 66032

Re: Counties and County Officers -- Mental Health Centers -- Duties of Boards; Personnel Decisions

Synopsis: K.S.A. 19-4003 vests the authority for personnel matters at a multi-county mental health center in the governing board of the center. While the statutes pertaining to the formation of multi-county mental health centers do not provide for a county to withdraw from participation, the power to terminate participation in such a center may be implied from the provisions of the act. Provisions for withdrawing from participation may be part of an agreement between the participating counties pertaining to the mental health center. In such a case, the right of the county to withdraw is dependent upon the terms of the agreement.

No county may extend a levy for mental health services unless it has established a mental health center and appointed a governing board therefor under K.S.A. 19-4001 and 19-4002. The proceeds of such a levy must be turned over to the governing board and under Article 11, Section 5 of the Kansas Constitution, the proceeds of such a levy may not be applied to any other purpose. Cited herein: K.S.A. 19-4001, 19-4002, 19-4003, 19-4004; K.S.A. 1983 Supp. 79-1947; Kan. Const., Art. 11, §5.

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Dear Mr. Solander:

As a member of the governing board of the Southeast Kansas Mental Health Center, you have requested an opinion as to whether one of the counties participating in a multi-county mental health center may condition future county contributions to the center upon the making of personnel decisions which are satisfactory to that county's board of commissioners.

You describe the following circumstances to provide a context for your request. The Southeast Kansas Mental Health Center is a multi-county mental health center organized under K.S.A. 19-4001 et seq. There are six participating counties. Joe Doe is hired by the center's board of directors as a professional counselor. Because Mr. Doe has violated some of the center's personnel rules and policies, the governing board places Doe on probation. The probationary period may result in Doe's dismissal. The board of county commissioners in one of the participating counties objects to this decision regarding Mr. Doe and advises the governing board that the county will withdraw present funding and refuse future funding unless Doe is retained as an employee of the center. You inquire about the commission's authority to control personnel decisions at the center in this manner.

In order to respond to your inquiry, it is necessary to examine the statutes which provide for community mental health centers. K.S.A. 19-4001 provides that counties may establish individual or multi-county health centers. Such centers are organized, financed and operated according to the terms of K.S.A. 19-4001 et seq. When a group of counties agrees to establish a mental health center, the participating counties, pursuant to K.S.A. 19-4002, establish a governing board, the duties of which are prescribed by K.S.A. 19-4003. In part, that statute states that the duties of the board shall include:

"(b) Formulating and establishing policies for the operation of the mental health center . . . and employment of personnel if the governing board operates a mental health center . . . ." (Emphasis added.)

This subsection clearly vests authority over personnel matters in the governing board of a multi-county health center. While the county commissioners of the participating counties have the power to make appointments to the selection committee for the governing board and the power to levy a tax to support the center, they are not granted any specific authority over personnel matters at a multi-county health center. In the case of multi-county centers the authority of the governing board over

personnel matters is clearly necessary to assure uniform policies and the efficient operation of the center.

As noted above, however, the board of commissioners in each participating county is authorized by K.S.A. 19-4004 to levy an annual tax for mental health services. The tax is levied upon the approval of the board of county commissioners, and may be up to one mill. K.S.A. 1983 Supp. 79-1947. Certain additional taxes may be subject to an election if a petition signed by 5% of the electors of the county is filed protesting the levy. See K.S.A. 19-4004.

In light of these circumstances, your inquiry raises two questions. First, may a participating county withdraw its present funding from a center and second, may a board of county commissioners cease funding in the future.

Addressing the latter question first, we note that K.S.A. 19-4001 et seq., fails to provide for such a contingency. It does not establish a procedure for a county to withdraw from participation in a multi-county mental health center. The act is silent on this point, as well as numerous others, leaving many of the necessary policies regarding the functions of a multi-county center subject to the agreement of the participating counties, as is noted in Attorney General Opinion No. 76-365. That opinion addressed this same question and concluded as follows:

"Given the relative generality of the act, and its reliance upon the terms agreement of the parties to a multi-county agreement [sic] to provide the operative [sic] legal and administrative framework of multi-county centers, it is my opinion that the right of a particular county to withdrawal [sic] from a multi-county center must necessarily depend upon the terms of the agreement itself, and that an agreement establishing a multi-county center might lawfully include a provision respecting withdrawal and the procedure for doing so. In short, because the establishment of the multi-county center is based substantially on the contractual commitments of the counties which are party thereto, the right to withdrawal itself depends on that same agreement, absent any material statutory provisions. The language of the act itself does not support a legal conclusion that withdrawal may not be permitted, or agreed upon by the parties. If the agreement itself is silent, the county may, presumptively, terminate its contractual participation in the multi-county operation just as it may terminate any other contractual commitment." (Emphasis added.)

Although the act fails to provide that a county may withdraw from a multi-county mental health center, we find nothing in the act which precludes a participating county from possessing such authority. In addition, the legislature has left the decision to levy the necessary tax solely in the hands of the county commissioners of each participating county. Nothing in the act indicates that authority to withdraw was intentionally omitted. Under these circumstances, it is our opinion that a county's authority to withdraw from participation in a multi-county mental health center may be implied. Cf. Gilbert v. Craddock, 67 Kan. 346 (1903). Needless to say, in view of the importance and value of the availability of such services to the citizens of Kansas, we would hope that a decision to withdraw from participation would be made only after careful consideration of the public's interest in the health and welfare of the community.

You also inquire about the authority of a county to withdraw its present funding from the mental health center. As noted above, K.S.A. 19-4004 authorizes the board of county commissioners of each participating county to levy an annual tax to support mental health services, and further directs that funds so derived be placed in the hands of the appropriate governing body. In addition, K.S.A. 19-4003 provides in part:

"All money provided for mental health and/or mental retardation purposes under the provisions of this act shall, when collected, be paid over to the treasurer of said governing board for the purposes of this act. Such governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer under the provisions of this act, and no money shall be paid therefrom, except upon vouchers signed by the treasurer and on order of the governing board."

In other words, the county may not extend a levy pursuant to K.S.A. 19-4004 unless it has established a governing board, and any such levy must be paid over to the governing board under the terms of the act. In addition, Article 11, Section 5 of the Kansas Constitution provides:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

The proceeds of a levy authorized by K.S.A. 19-4004 cannot be utilized for any purpose other than that provided by the act.

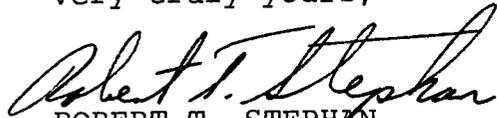
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Thus, if a county has authorized a levy under 19-4004, that levy must be paid over to the mental health center governing board and utilized for the purposes of the act.

In conclusion, we find that K.S.A. 19-4003 vests the authority for personnel matters at a multi-county mental health center in the governing board of the center. While the statutes pertaining to the formation of multi-county mental health centers do not provide for a county to withdraw from participation, the power to terminate participation in such a center may be implied from the provisions of the act. Provisions for withdrawing from participation may be part of an agreement between the participating counties pertaining to the mental health center. In such a case, the right of the county to withdraw is dependent upon the terms of the agreement.

No county may impose a levy for mental health services unless it has established a mental health center and appointed a governing board therefor under K.S.A. 19-4001 and 19-4002. The proceeds of such a levy must be turned over to the governing board and under Article 11, Section 5 of the Kansas Constitution, the proceeds of such a levy may not be applied to any other purpose.

Very truly yours,



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ATTORNEY GENERAL OF KANSAS



Mary F. Carson  
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RTS:JSS:MFC:crw