



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

September 10, 1985

ATTORNEY GENERAL OPINION NO. 85-115

The Honorable J. C. Long
State Representative, 100th District
P.O. Box 472
Harper, Kansas 67058

Re: Public Health--Hospitals and Other Facilities;
Licensing, Inspection and Regulation--Moratorium
on Construction; Effect of Inconsistent Acts Passed
in Same Session

Synopsis: 1985 House Bill No. 2627 (L. 1985, ch. 204) imposes a one-year moratorium in the construction of any general or special hospital in Kansas, as well as any actions which increase the licensed bed capacity of such hospitals. 1985 House Bill No. 2620 (L. 1985, ch. 335) acts to correct a technical defect in the issuance of bonds by the Attica Hospital District No. 1, which bonds are for the purpose of enlarging and improving the extended care unit of the hospital. In that the latter bill specifically authorizes the hospital district to issue the bonds for the purpose approved by the voters (i.e. additional beds for extended care), the general moratorium on new construction of 1985 House Bill No. 2627 should be construed to allow this specific project. Cited herein: L. 1985, ch. 204, 335.

* * *

Dear Representative Long:

As State Representative for the 100th District, which includes Harper County, you request our opinion on a question concerning two bills which were approved by the 1985 Kansas Legislature and subsequently have become law. In that the two measures appear to be in conflict with one another, you inquire as to whether they

can be harmonized, or if one must be found to be amended or repealed by the other.

Both of the acts in question concern hospitals. The first is a special piece of legislation which you introduced in order to correct a defect in a bond issue by Attica Hospital District No. 1, which is located in Harper County. Section 1 of the bill (1985 House Bill No. 2620, now at L. 1985, ch. 335) states:

"Any election held prior to the effective date of this act for the approval of the issuance of general obligation bonds of Attica Hospital District No. 1 of Harper county, Kansas, in an amount not to exceed \$1,300,000 for the purpose of enlarging and improving the extended care unit of the District's hospital located in Attica, Kansas, under the authority of K.S.A. 80-2501, et seq., notice of which was first published 18 days prior to the election instead of 21 days prior to the election is hereby validated. The District is hereby authorized to issue such bonds in the amount and for the purpose approved by the voters at such election. The bonds so issued shall be legal and binding general obligations of the District." (Emphasis added.)

We are informed that the question approved by the voters involved the addition of approximately 30 additional beds to the hospital, which were to be used for persons requiring intermediate care, but who were not in need of care for acute medical conditions. In other words, the additional facilities were to be utilized for individuals who would otherwise be in nursing homes, and would not expand the hospital's capacity to care for persons recovering from surgery, child birth, and so forth. By the terms of Section 1, the legislature validated the terms of the election, and authorized the district to proceed with the issuance of bonds "for the purpose approved by the voters." The bill was approved by the governor on May 3, 1985 and became effective upon publication on May 9.

The second act of the legislature (1985 House Bill No. 2627, now at L. 1985, ch. 204) imposes a one-year moratorium on the construction of new general or special hospitals and other actions which increase the licensed bed capacity of existing facilities. For purposes of this opinion, the heart of the bill is found in Sections 1 and 2, which state as follows:

"Section 1. As used in this act, the term 'hospital' means a general hospital or a special hospital licensed under K.S.A. 65-425 to 65-441, inclusive, and amendments thereto.

"Sec. 2. The following construction or modifications shall not be commenced prior to July 1, 1986:

"(a) Any erections, building, alteration, reconstruction, modernization, improvement, extension, lease or other acquisition by or on behalf of a hospital that increases the licensed bed capacity of a hospital or relocates hospital beds from one physical facility or site to another; or

"(b) the establishment of a new hospital."

Section 3 sets forth some exceptions to the general prohibitions in Section 2, none of which are relevant here, while Section 4 permits the Secretary of the Department of Health and Environment to grant emergency waivers from the provisions of the act upon certain showings or the occurrence of certain events. The bill was approved on May 10, 1985 and became effective upon its publication in the statute book on July 1.

On their face, the two acts appear to be inconsistent, for while one authorizes the issuance of bonds (and hence the expenditure of the proceeds) for the purpose of expanding Attica Hospital, the other imposes a moratorium on construction of such facilities. In determining the effect to be given to these two bills, we are guided by a frequently-stated rule of statutory construction, namely that:

"[l]aws enacted by the same legislature about the same time and concerning the same subject-matter, being in pari materia, are to be taken and considered together in order to determine the legislative purpose and arrive at the true result." In re Hall, Petitioner, 38 Kan. 670, Syl. 1, (1888).

See also State ex rel. v. McCombs, 125 Kan. 92 (1928), Millhaubt v. McKee, 141 Kan. 181 (1935). In the Hall case, it was established that two measures enacted at the same time which are apparently in conflict must be read together and, whenever possible, reconciled to form a consistent whole. Insofar as repeals by implication are not favored by the law, only when this is impossible should other rules of statutory construction be employed to determine which act takes precedence. Millhaubt, supra, at 183, 184.

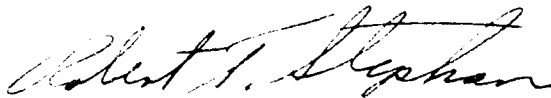
In the Millhaubt case, the court was faced with a situation similar to that found here, namely that the legislature enacted a general bill and a specific bill during the same session, "on

days so close together that allowing for the manner in which the work of a legislature is performed they might be said to have been passed at the same time." 141 Kan. at 185. In finding that the two bills should be read together so as to allow the specific one to remain as an exception to the general, the court rejected arguments that the general law repealed by implication the more limited measure.

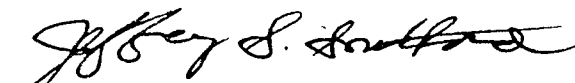
In our opinion, the same result should be reached here, where the legislature has specifically permitted Attica Hospital District No. 1 to proceed with the issuance of bonds (and by implication the construction of facilities) as earlier approved by the voters of the district. While the general moratorium would have otherwise have precluded such construction, the two acts can be read together in such a way that leaves the moratorium intact, yet permits this project to go forward. Put another way, 1985 House Bill No. 2620 is a specific exception to the moratorium, in the same way as are the exceptions listed in the moratorium bill itself (at Section 3). Accordingly, the district may proceed with the construction of the facility earlier approved by the voters in the bond election which was validated by the legislature in 1985 House Bill No. 2620.

In conclusion, 1985 House Bill No. 2627 (L. 1985, ch. 204) imposes a one-year moratorium in the construction of any general or special hospital in Kansas, as well as any actions which increase the licensed bed capacity of such hospitals. 1985 House Bill No. 2620 (L. 1985, ch. 335) acts to correct a technical defect in the issuance of bonds by the Attica Hospital District No. 1, which bonds are for the purpose of enlarging and improving the extended care unit of the hospital. In that the latter bill specifically authorizes the hospital district to issue the bonds for the purpose approved by the voters (i.e. additional beds for extended care), the general moratorium on new construction of 1985 House Bill No. 2627 should be construed to allow this specific project.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Deputy Attorney General