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ATTORNEY GENERAL OPINION 85- 170

The Honorable Marvin L. Littlejohn
State Representative, 119th District
14 Southwest Second
Phillipsburg, Kansas 67661

Re: Public Health -- Hospitals and Other Facilities --
Moratorium on Modifications; Consolidation of
Adjacent Hospital and Nursing Home

Synopsis: A consolidation of a nursing home and hospital by
converting the nursing home into a long-term care
unit of the hospital is an alteration which
increases the licensed bed capacity of the
hospital. Such a consolidation is prohibited under
L. 1985, Ch. 204. Cited herein: L. 1985, Ch. 204.

* * *

Dear Representative Littlejohn:

As Representative of the 119th District, you request our
opinion concerning 1985 House Bill No. 2627. You advise that
Wichita County Hospital and the Golden Acres Nursing Home wish
to consolidate as one functional unit by making the nursing
home a long-term care unit of the hospital. The two
facilities are physically attached and are currently separated
only by a common set of swinging doors. You inquire whether
this bill prohibits such consolidation.

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 certain other actions which increase the
licensed bed capacity of existing hospitals. For purposes of
this opinion, the heart of the bill is found in Section 2
which states in pertinent part as follows:

"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;"

It is clear that the proposed consolidation of the hospital and nursing home would be a modification that would increase the licensed bed capacity of the hospital. The hospital, which currently has 13 licensed beds, would increase its licensed bed capacity by 30 by consolidation with the nursing home. The issue raised is whether such a modification, which requires no physical change in existing structures, constitutes an "erection, building alteration, reconstruction, modernization, improvement, extension, lease or other acquisition" by or on behalf of the hospital.

Clearly, the proposed consolidation does not entail an "erection," "building," "reconstruction," or "lease." In determining whether such consolidation is an "alteration," "modernization," "improvement," or "acquisition" other than a lease, we look to the commonly understood meaning of those terms. See, e.g. Appeal of Armed Forces Co-op Insuring Assn., 5 Kan.App.2d 787 (1981).

The following denotation of the root verbs of those terms are found in Webster's Third New International Dictionary (unabridged edition, 1968):

"alter" - "to cause to become different in some particular characteristic without changing into something else";

"modernize" - "to make modern";

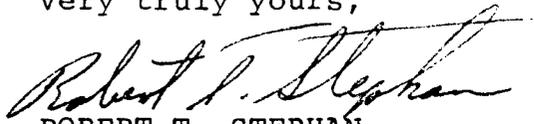
"improve" - "to make greater in amount or degree" or "to enhance in value or quality"; and,

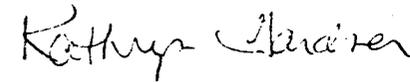
"acquire" - "to come into possession, control, or power of disposal of."

In our judgment, the proposed consolidation of the hospital and nursing home constitutes an "alteration," "improvement," or non-lease "acquisition" by or on behalf of the hospital. Indeed, it is difficult to conceive of an action which would result in an increase in the licensed bed capacity of a hospital which would not be included within the broad terms chosen by the legislature. It appears that the legislature intended to prohibit any action which would result in an increase of the licensed bed capacity of a hospital, unless such action falls within the express exceptions listed in Section 3 of the Act. See Attorney General Opinion No. 85-115, copy enclosed. This interpretation is consistent with the legislation's purpose of preventing unnecessary duplication or expansion of health facilities, thereby preventing (at least in part) higher medical costs resulting from such duplication or expansion.

Although 1985 House Bill No. 2627 prohibits consolidation of the hospital and nursing home by means which would result in an increase in the licensed bed capacity of the hospital, the general goal of reducing costs without sacrificing needed services may be achieved by any other legal means. Further, we note that the act by its own terms expires on July 1, 1986.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Kathryn Gardner
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RTS:JSS:KG:crw