



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 187

Ms. Pamela J. Barnett  
Kearney County Attorney  
Box 324  
Lakin, Kansas 67860

Re: Bonds and Warrants -- Cash-Basis Law -- Cash Basis  
for Municipalities

Counties and County Officers -- Hospitals and  
Related Facilities -- Hospital Board; Powers

Synopsis: K.S.A. 10-1101 et seq., the cash-basis law, does not apply to county hospital boards when managing and controlling hospital funds. However, should the hospital enter into an agreement creating a potential indebtedness of the county, the cash-basis law would apply. Kearney County Hospital may enter into an agreement with Kearney County Bank whereby the bank purchases the accounts owed to the hospital and the hospital guarantees payment of that account if such an agreement in no way creates a potential liability against the county. Cited herein: K.S.A. 10-1101 et seq.; K.S.A. 1986 Supp. 19-4601; 19-4602; 19-4605, 19-4610.

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Dear Ms. Barnett:

As Kearney County Attorney, you ask our opinion on the legalities involved in Kearney County Hospital entering into an agreement with the Kearney County Bank. Specifically,

you ask about the authority of the hospital board to enter into a contract whereby hospital accounts owed to the hospital are purchased by the bank with recourse. You inform us that a private law firm offered its opinion that such an arrangement may violate the cash-basis law.

K.S.A. 1986 Supp. 19-4601 et seq. empower a county to establish a hospital. Hospitals created pursuant to this act must be governed by a board, to be elected or appointed according to procedures set forth in K.S.A. 1986 Supp. 19-4605. The powers of this board are contained in K.S.A. 1986 Supp. 19-4610, which in part states that the board "is charged with the supervision, care, and custody of all hospital property." Thus, the hospital board has the authority to oversee financing of hospital operations.

The cash-basis law, K.S.A. 10-1101 et seq. prohibits a "municipality" or "governing body", as defined in K.S.A. 10-1101(a) and (b), from creating indebtedness except as provided. The accounting principle behind cash basis treats as income only that which is actually received, and as expense only that which is actually paid out. See Black's Law Dictionary 196 (5th ed. 1979).

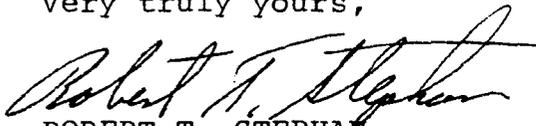
Counties are subject to the cash-basis law. However, Attorney General Opinion No. 79-47, opined that a hospital board organized and appointed pursuant to K.S.A. 19-1801 et seq. is not subject to the requirements of the cash-basis law regarding the expenditure of hospital funds because a hospital is not a "municipality" nor is the hospital board a "governing body" as those terms are defined in K.S.A. 10-1101. See also Attorney General Opinion No. 77-352. While we do not know under which statutes Kearney County Hospital originally organized, K.S.A. 19-4601 et seq. currently govern all county hospitals. Those statutes give a hospital autonomous powers beyond a mere administrative arm of county government. The hospital board of trustees has exclusive control of the expenditures of all county hospital money, except money acquired through the issuance of revenue bonds. Thus, a county hospital organized or operating under K.S.A. 19-4601 et seq. is not a municipality for purposes of the cash-basis law. Accordingly, the cash-basis law will not apply to actions of the Kearney County hospital board, unless the county is in some way a party to the proposed agreement. While the hospital board is not subject to the cash-basis law in the management and control of hospital funds, the hospital board cannot by its own action create an indebtedness involving the county.

The proposed agreement between Kearney County Hospital and Kearney County Bank of Lakin allows the bank to purchase installment sales contracts and promissory notes belonging to the hospital. These purchases would be made "With Recourse," and the hospital thereby guarantees the payment of these accounts should there be a default. Upon default, the bank may demand repurchase of the accounts, plus interest accrued, within thirty days. You inform us that this arrangement is considered factoring. Normally, factoring involves the assumption of risk of loss in return for some agreed discount. Manhattan Factoring Corp. v. Osborn, 385 S.W.2d 785,790 (Ark. 1965). The proposed agreement places ultimate liability upon Kearney Hospital. The hospital remains responsible for the account should the bank be unable to collect. Thus, the ultimate issue becomes whether or not the county can, in any way, be held liable for a debt created by the hospital board.

K.S.A. 10-1101(b) includes "any governing body or board of a municipality having authority under the laws of this state to create indebtedness against the municipality." The cash-basis law applies if local, state, or common law permits the bank to look to the county for payment. Should existing authority or the agreement itself limit the bank's recovery to the hospital, the cash-basis law will not apply.

We do not have sufficient information concerning the financial responsibility of Kearney County for Kearney County Hospital in order to determine from whom Kearney County Bank may ultimately recover. If the agreement or other existing authority places a limitation upon the Bank's source of recovery, and the funds involved remain hospital funds exclusively controlled by the hospital board, the cash-basis law does not apply, and Kearney Hospital may enter into the proposed agreement with Kearney Bank.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Theresa Marcel Nuckolls  
Assistant Attorney General