



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 88- 31

Charles A. Peckham
Rawlins County Attorney
308 Main
Atwood, Kansas 67730

Re: Counties and County Officers -- Hospitals and
Related Facilities -- County Hospitals; Deposit of
Hospital Moneys; Financial Records

Synopsis: K.S.A. 1987 Supp. 19-4601 et seq. requires
the hospital board of a county hospital, operating
pursuant to that act, to handle all moneys, except
those acquired through the issuance of revenue
bonds, pursuant to the claims and warrant or
warrant check procedures set forth in K.S.A. 1987
Supp. 19-4608, K.S.A. 10-801 to 10-806, and
12-105a and 12-1056. Failure of the county
hospital board to comply with these procedures does
not result in the board of county commissioner's
loss of taxing authority pursuant to this act, nor
is the county responsible for the independent
administrative actions of the hospital board.
Cited herein: K.S.A. 1987 Supp. 10-802; K.S.A.
12-105a; K.S.A. 1987 Supp. 12-105b; 19-4605;
19-4606; 19-4608; 19-4610.

* * *

Dear Mr. Peckham:

As Rawlins County Attorney you request our opinion on the
correct procedures for use of funds collected pursuant to the
tax levy authorized by K.S.A. 1987 Supp. 19-4601 et seq.

and the legal ramifications when such public funds are not handled in accordance with those procedures.

K.S.A. 1987 Supp. 19-4605 allows the board of county commissioners to provide for the appointment or election of a county hospital board. Under K.S.A. 1987 Supp. 19-4606 the board of county commissioners or, if it is elected, the hospital board may levy a tax to raise funds for the county hospital. The procedures for handling hospital moneys is set forth in K.S.A. 1987 Supp. 19-4608 which states:

"(a) All hospital moneys, except moneys acquired through the issuance of revenue bonds, shall be paid to the treasurer of the board, shall be allocated to and accounted for in separate funds or accounts of the hospital, and shall be paid out only upon claims and warrants or warrant checks as provided in K.S.A. 10-801 to 10-806, inclusive, and K.S.A. 12-105a and 12-105b, and amendments to these statutes. The board may designate a person or persons to sign such claims and warrants or warrant checks."
(Emphasis added).

K.S.A. 1987 Supp. 10-802 discusses the proper procedure for issuing warrants or warrant checks:

"No warrants or warrant checks shall be issued except as provided by law and no warrants or warrant checks shall be issued or authorized by any governing body except on claims as provided by K.S.A. 12-105b, and amendments thereto. Claims shall not be required for the payment of bonds and interest thereon, temporary notes, scrip or no-fund warrants issued by the municipality."

Definitions contained in K.S.A. 12-105a further evidence a legislative intent that these procedural requirements govern the hospital board:

"(a) 'Municipality' means and includes . . . hospital board of trustees having power to create indebtedness and make payment of the same independently of the parent unit."

K.S.A. 1987 Supp. 12-105b provides a uniform procedure for the presentment and payment of claims made to a "municipality":

"(a) All claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section. A claim may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information."

K.S.A. 1987 Supp. 12-105b(b) and (e) include two exceptions to the presentment of claims requirement when such payment is for salaries or wages of officers or employees or payment is made to take advantage of a discount for early payment or to avoid assessment of a penalty for late payments.

K.S.A. 1987 Supp. 12-105b(g) sets forth the system whereby payment of certain claims must generally be audited and approved before payment.

"(g) Except as otherwise provided, before any claim is presented to the governing body or before any claim is paid by any officer or employee of the municipality under subsection (e), it shall be audited by the clerk, secretary, manager, superintendent, finance committee or finance department or other officer or officers charged by law to approve claims affecting the area of government concerned in the claim, and thereby approved in whole or in part as correct, due and unpaid." (Emphasis added).

Thus, when these provisions are read together it is clear that, unless otherwise excepted, the county hospital board may issue warrants or warrant checks only on presentment of claims. Unless specifically exempted, the aforementioned

statutes clearly apply to expenditures made by the county hospital.

The second issue raised by Rawlins county concerns the legal ramifications of failure to comply with the accounting system mandated by K.S.A. 1987 Supp. 19-4608.

K.S.A. 1987 Supp. 19-4606 authorizes the board of county commissioners to levy a tax for the purpose of funding any hospital managed or controlled under the provisions contained in the act. In some counties, this may be the only active participation by the county in the administration of the county hospital.

Previous opinions issued by this office discuss the degree of autonomy enjoyed by the county hospital and the board of hospital trustees. See Attorney General Opinions No. 87-187, 87-109, 85-106, 79-47 and 77-352. The relative independence given to a county hospital board under K.S.A. 1987 Supp. 19-4610 divests the board of county commissioner's of direct control of the administrative activities performed by the board of hospital trustees. As opined in Attorney General Opinion No. 85-106, the hospital board is more than an agent of the county and the underlying authority for the hospital is not the board of county commissioners but is rather the legislature. Thus, as the board of county commissioner's authority over and control of the hospital board is limited in scope, the county's responsibility for the running of the hospital is also limited. See e.g. K.S.A. 1987 Supp. 19-702(b).

K.S.A. 1987 Supp. 19-4606 does not contain a provision linking the authority to tax with sanctions should the tax moneys thus raised not be properly handled by the hospital board. In Sheiver v. Board of County Commissioners of Sedgwick County, 189 Kan. 548 (1962), the court addressed a taxation question and stated:

"Generally speaking, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the acts shall not be done in any other manner or time than that designated." Id. at 556.

The court further found that the right of the county to levy taxes was not lost by estoppel nor by the unauthorized acts or representations of its officers.

Assuming that the levy itself is lawfully made, a mere taxpayer, affected no differently than other taxpayers, lacks standing to challenge the alleged unlawful expenditure of county funds. See Robinson v. Board of County Com'rs of Osborne County, 210 Kan. 684 (1972). Moreover, it is questionable whether failure to comply with mandated accounting principles rises to the level of an unlawful expenditure of funds.

However, when a county officer who has no authority to make the settlement or is not authorized to pay the money does so, it may in some circumstances be considered a breach of official bond, and in some cases become susceptible to an injunction preventing future non-compliance. See School District No. 12 of Ottawa County v. Board of Com'rs of Ottawa County, 133 Kan. 528 (1931); Lower v. Morris County Com'rs, 62 Kan. 295 (1900); Board of Com'rs of Cherokee County v. U.S. Fidelity & Guarantee Co., 141 Kan. 301 (1935); Stevenson v. Board of Com'rs of Shawnee, 98 Kan. 671 (1916). Furthermore, an action in mandamus may be available to enforce compliance with K.S.A. 1987 Supp. 19-4608.

The board of county commissioners is authorized to levy and distribute moneys under K.S.A. 1987 Supp. 19-4601 et seq. It is assumed that, in levying this authorized tax, the board of county commissioners complied with the mandated procedures. The board of county commissioners has not been given a continuing duty under K.S.A. 1987 Supp. 19-4601 et seq. to insure that the hospital board comply with the procedures established for disbursement of those tax revenues.

Thus, it is our opinion that should a county hospital board fail to comply with procedures for disbursement of tax revenues, as set forth in K.S.A. 1987 Supp. 17-4601 et seq., such failure does not impose a liability upon the county officials who originally collected and handled those tax revenues. As we are not asked to discuss sanctions

against or the possible liability of the county hospital board, we decline to do so at this time.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
Assistant Attorney General

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