



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 60

H. Scott Beims
Rawlins County Attorney
P.O. Box 449
Atwood, Kansas 67730

Re: Townships and Township Officers -- Hospitals and Health Care Facilities; Health Care Facilities and Services Hospital Districts -- Conversion of County Hospital

Synopsis: A county hospital need not terminate operations completely before converting to a health care facilities and services district pursuant to K.S.A. 80-2550 et seq. In our opinion, absent a statutory mechanism, a resolution adopted by the board of county commissioners and the present board of trustees of the hospital should suffice to effectuate such a conversion. The county may also wish to consider holding an advisory election on the issue. Cited herein: K.S.A. 19-4601; 19-4625; 65-425; 80-2550; 80-2552.

* * *

Dear Mr. Beims:

As Rawlins county attorney you ask a number of questions relating to the health care facilities and services hospital districts act as it may pertain to the Rawlins county hospital.

You inform us that the Rawlins county hospital was organized pursuant to K.S.A. 19-4601 et seq. and is governed by an elected board of trustees. The hospital is a medical care facility as defined by K.S.A. 65-425; in addition it provides other health care services. The hospital is receiving the benefit of a 16 mill levy, of which 10 mills were approved by election of qualified voters. Nevertheless, the hospital is experiencing severe financial problems despite cost cutting measures. The board recognizes that it may not be able to maintain the facility as a county hospital. It is in light of this situation that you ask the following questions regarding conversion of the county hospital to a health care facilities and services hospital district pursuant to K.S.A. 80-2550 et seq.:

"1. If a county hospital desires to become a health care facilities and services district pursuant to K.S.A. 80-2550 et seq., does this require special legislation?

2. If special legislation is necessary to convert from a county hospital to a county health care facilities and services district, can legislation be framed in such a way as to allow this at some time in the future if the hospital board decides that this is necessary?

3. The law requires that in order to close a hospital that the question be submitted to the voters. It appears from the language that this question is submitted either after a resolution by the county commissioners or after an election is required by five percent of the voters of the county. Since the hospital is governed by an elected board, is it that board rather than the commissioners that makes the decision to submit the question of closure to the voters?

4. Does a county hospital have to be closed by the election provided for at K.S.A. 19-4625 before it can become a health care facilities and services district under K.S.A. 80-2550 et seq., or does the hospital board have the authority to convert it to such a facility without an election?

5. In regard to the last question, can this conversion, whether with or without an election, be

immediate or does there have to be a period of complete termination of all services?

6. The present hospital board has available the 16 mills as described above. If the facility is converted to a health care facilities and services district, would said board (which would remain the same) have the use of these funds also or would there have to be an additional election?

7. In the event that a conversion to the health care facilities classification is determined to be the avenue that the hospital board feels is in the best interest [of the county], could the election required by K.S.A. 19-4625 be on the question of whether or not the facility be converted to a health care facilities rather than a question as to whether the hospital should be closed?"

The health care facilities and services hospital districts act in its present form is found at K.S.A. 80-2550 et seq. and provides in pertinent part as follows:

"80-2550. Definitions. As used in this act:

"(a) 'Board' means a board which is vested with the management and control of a health care facilities and services hospital district;

"(b) 'health care facilities and services hospital district' means a hospital district, city hospital or county hospital;

"(1) Which was established under the laws of this state in effect at the time established as a hospital district, city hospital or county hospital;

"(2) in which no hospital is being operated and maintained or in which the operation of a hospital has been terminated; and

"(3) in which health care facilities and services are being operated and maintained;

"(c) 'health care facilities and services' means any clinic, long-term care facility, home for the aged, outpatient services, in-home health services, child-care services, respite care services, adult day care services, dietary services, alcohol and drug abuse services and emergency medical or ambulance services;

"(d) 'hospital' means a medical care facility as defined in K.S.A. 65-425 and amendments thereto.

"80-2552. Health care facilities and services hospital districts; subject to provisions of general law. Any health care facilities and services hospital district shall be deemed a hospital to the same extent as though the same were a hospital which is being operated and maintained as a hospital and shall be controlled, financed, operated, managed and maintained as provided by the general law relating to such hospital immediately prior to the time the hospital became a health care facilities and services hospital district, and shall be subject to the limitations and restrictions provided by such general law. The determination of the number of board members of any existing health care facilities and services hospital district, the method of selection and the terms, qualifications, organization, meetings and compensation thereof shall be as provided by the general law relating to hospital boards under which such hospital was operated and maintained immediately prior to the time the hospital became a health care facilities and services hospital district, and every such board of an existing health care facilities and services hospital district shall have the same powers, duties and functions that are prescribed for boards of hospitals by the law under which such hospital was operated and maintained immediately prior to the time

the hospital became a health care facilities and services hospital district."

In order to respond to your questions, a detailed examination of the legislative history of K.S.A. 80-2550 et seq., an act governing health care facilities and services hospital districts, is required.

"That type of district was discovered and legitimized at the time the legislature recodified the county and district hospital statutes in the mid-1980's. In reality, the term defines a hospital district in which no hospital is being operated and maintained, but in which health care facilities and services are being maintained. In short, the existing law allowed hospital districts without hospitals to continue to provide the services being provided at the time of the recodification, i.e. emergency medical and ambulance services, and to continue to operate other than hospital facilities being operated at the time of the recodification, i.e., clinics, long-term care facilities, and homes for the aged." Report on Kansas Legislative Interim Studies to 1989 Legislature Re: Proposal No. 38 - Small Rural Medical Facilities.

The act as originally adopted in 1984 pertained only to the conversion of a hospital district to a health care facilities and services hospital district. In 1989 the act was amended and made applicable to the conversion of city and county hospitals as well as hospital districts. The act was designed to address the difficulties of low census, inadequate reimbursement and recruitment and retention of medical staff and other hospital personnel experienced by small rural medical care facilities. The solution presented by the act was to provide an alternative method of continued use of the hospital facility and provision of health care services other than those provided by an acute care hospital. Report on Kansas Legislative Interim Studies to 1989 Legislature Re: Proposal No. 38 - Small Rural Medical Facilities; Minutes of the House Committee on Public Health and Welfare, Attachments No. 1, 2 and 3, January 26, 1989.

You inquire whether a hospital which wishes to become a health care facilities and services hospital district must first terminate operations wholly and completely or whether a less drastic method is contemplated by the act. From the legislative history, it is clear that a method of conversion was intended.

"Rep. Neufeld then spoke to HB 3124, saying that hospital districts who cannot close their doors, will be authorized through the passage of this bill to go forward and change their facility from a hospital to an adult care center, thereby allowing them to be able to pay their debts and continue to serve the community. . . ." Minutes of the House Committee on Public Health and Welfare, March 27, 1986.

"It was stated by the chairman that this bill was needed in order that hospital districts would no longer be operating in that capacity and maintaining a hospital could, with this legislation, continue to operate specified health care facilities or services. . . ." Senate Committee on Public Health and Welfare, April 7, 1986.

"HB 2011 would authorize County and District Hospitals to provide health care services in addition to or instead of acute care hospitals. . . ." House Committee on Public Health and Welfare, January 26, 1989.

"This bill attempts to provide communities that have small hospitals threatened with closings due to low census, the ability to continue offering their community certain services once the hospital has closed. . . . Current law allows a hospital district to continue offering some services when a hospital closes. . . ." House Committee on Public Health and Welfare, January 26, 1989.

"In essence, House Bill 2011 attempts to provide those communities with threatened

hospitals the ability to continue offering certain services once the hospital itself has closed. . . ." Minutes of House Committee on Public Health and Welfare, Attachment No. 2, January 26, 1989.

". . . It allows hospital districts to convert existing hospital structures into facilities which offer health related services. . . ." Fiscal Note for HB 2011 by Committee on Public Health and Welfare, Minutes of House Committee on Public Health and Welfare, January 26, 1989.

"This amendment would allow hospital districts to convert existing hospital structures into facilities other than hospitals and to provide health care services other than acute care and long term care as currently being provided in those hospitals. . . ." Report on Kansas Legislative Interim Studies to 1989 Legislature Re: Proposal No. 38 - Small Rural Medical Facilities.

The overall purpose of the act was to "remove a barrier to diversification of facilities and services in those counties and hospital districts where the ability to diversify may mean the difference between continuing to provide health care service to rural Kansans or closing those facilities as local support and resources are exhausted." Report on Kansas Legislative Interim Studies to 1989 Legislature Re: Proposal No. 38 - Small Rural Medical Facilities. This purpose would be inexorably defeated if anything other than transformation was the contemplated mechanism for a hospital to become a health care facilities and services hospital district. In addition, the legislative history is replete with words of that intent: "change," "continue to operate," "provide instead of," and "convert."

The legislative history of K.S.A. 80-2550 et seq. supports a conclusion of legislative intent that under certain circumstances a hospital district, a city or county hospital could become a health care facilities and services hospital district. Unfortunately, the act does not speak to the specific mechanism to transform from one legal entity to

another. Given the absence of a statutory conversion mechanism, but given the presence of clear legislative intent that a conversion be permitted, we suggest that as general hospital services (as defined by K.S.A. 65-425) cease, the board of county commissioners adopt a resolution approving the conversion of Rawlins county hospital to Rawlins county health care facilities and services hospital district. We also suggest that the present board of trustees likewise approve the conversion by formal motion and vote. In the absence of specific legislation authorizing submission of the matter to a vote of qualified electors, a binding vote is not permitted. However, the county may wish to consider putting the issue to a vote of qualified electors in a non-binding advisory election.

These suggestions find support in the fiscal note for 1989 House Bill No. 2011 by the committee on public health and welfare in which the following statement is found:

"The act is permissive local legislation
and therefore imposes no additional
expenditures or fiscal liabilities on
local units of government."

This suggested mechanism for conversion is in contrast to K.S.A. 19-4625 which provides for closing and terminating a county hospital, final disposition of all real and personal property and abolition of the board of trustees. In our opinion the health care facilities and services hospital district act provides an alternative to closing and terminating a county hospital pursuant to K.S.A. 19-4625 by enabling a county hospital to convert us of the existing structure to more cost-effective health care uses.

We believe the foregoing discussion addresses all but one of your questions. You ask whether the 16 mill levy presently available to the board would continue to be available without an election if the county hospital converts to a health care facilities and services hospital district. We again quote K.S.A. 80-2552:

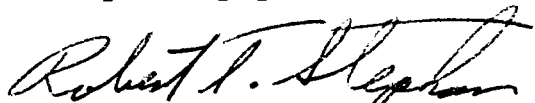
"Any health care facilities and services hospital district shall be deemed a hospital to the same extent as though the same were a hospital which is being operated and maintained as a hospital and shall be controlled, financed, operated, managed and maintained as provided by the


general law relating to such hospital immediately prior to the time the hospital became a health care facilities and services hospital district, and shall be subject to the limitations and restrictions provided by such general law."

While that language appears murky at first blush, the confusion disappears upon realization that the statute in effect waves a legislative magic wand, i.e. a county hospital which becomes a health care facilities and services hospital district is then deemed to be a county hospital again to be "controlled, financed, operated, managed and maintained" according to the applicable county hospital laws. The board therefore would continue to have the use of the mill levy funds without an additional election.

In conclusion, a county hospital need not terminate operations completely before converting to a health care facilities and services district pursuant to K.S.A. 80-2550 et seq. In our opinion, absent a statutory mechanism, a resolution adopted by the board of county commissioners and the present board of trustees of the hospital should suffice to effectuate such a conversion. The county may also wish to consider holding an advisory election on the issue.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Camille Nohe
Assistant Attorney General

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