

August 7, 2023

Chair Gossage and members of the 2023 Special Committee on Intellectual and Developmental Disability Waiver

Thank you for your service and allowing me the time to testify before you today.

Just a quick history- my wife Anna and I are parents/legal guardians of our 22-year-old daughter Sheridan. She is developmentally delayed, with a history of seizures and has been on the I/DD waitlist since August 2013. When we were told our wait for waiver funding would not happen in 2020 or 2021 as was communicated to us in 2013, we've struggled trying to navigate this convoluted system, applying for crisis funding a year ago which was denied. Sheridan must attend day service as a self-pay client since July 2022.

I'd like to bring to the committee's attention some of the barriers and difficulties we've faced during this time.

From our first contacts with our TCM, and meetings with Shawnee County CDDO we were discouraged by them when we asked what options we had as Sheridan was aging out of high school. When we asked about submitting a crisis funding request, they all said it wasn't worth pursuing and discouraged us from doing it. As working parents, we felt we had no other options and certainly that wasn't what we expected to hear.

I would like to know why the CDDO, who is supposed to be an advocate for and assist families and persons seeking help, were so negative? Do they have a stake in how many clients they approve for crisis and pass these submissions on to KDADS? For many of my questions relating to policy, the staff at the CDDO didn't know most of them. I had to research myself and tell them what I found.

Are they subject to reprisals or penalties from KDADS if they pass crisis submissions through that are denied by KDADS? That is certainly the impression we have. We've asked our TCM the same question and they have no good answer for us.

How can it in any way be right for a CDDO, that receives state and federal funds close to \$1M per year here in Shawnee County, to treat their taxpaying clients this way? And to also keep me from attending the funding committee meeting when they reviewed our crisis submission, when I was told prior that I would be able to attend. A KOMA complaint was filed with the AG's office because of this. After about 1 year I finally got their ruling, which stated that Shawnee County CDDO is part of TARC which was formed in 1954 by private citizens, a non-profit which doesn't make or enforce state policy, and is therefore not subject to KOMA.

I've attached the letter we received from the AG's office, as well as the letter I referenced to the AG in my KOMA complaint supporting our position from a ruling in 1994.

CDDO's were not even in existence in 1954. They do make state policy decisions, as gatekeepers and decision makers for these crisis and exception requests on behalf of KDADS. They are funded by our tax dollars, making decisions that affect families. How can they be allowed to operate like this with impunity?

We were told by the CDDO we had to exhaust other available community resources as part of the crisis request, per KDADS policy. I have read this policy which is very vague and ambiguous. Neither our TCM nor the CDDO would give us any real direction for this.

Our other option that they did tell us about was pursuing an exception related to the Kansas Vocational Rehab. Program. As written, the policy states for this exception a “person successfully transitions from Voc. Rehab Services who require on-going supports to maintain employment and self-sufficiency. Documentation of a successful VRS case closure indicating a need for continued supports is required in order to justify this exception.” We have done this, and after a year we’re still waiting documentation from VR showing this. Sheridan recently had her case closed by TARC employment stating she will need ongoing supports. We hope to get the letter from VR soon so we can continue with this exception request.

From the counselors at Voc. Rehab., to the staff at TARC employment services, and our own TCM, they had no or very little knowledge of this process as it relates to KDADS policy. There is a huge need for all these agencies to be educated and trained properly if they are the ones we are referred to for these services.

The last item I’d like to ask the committee about is regarding the numbers I’m seeing on the KDADS monthly waiver participation reports. Since the beginning of the year, the number of people getting I/DD waivers has dropped from 9,050 to 8,939. The waitlist number has grown from 4,804 to 5,100.

Who in this program manages this list? Does KDADS actively manage it? Do the MCO’s? When someone passes or moves out of state, does someone else move onto waivers from the waitlist as soon as possible? Is the program at a standstill due to funding?

I’m more than willing and able to speak further with any of you about these issues as needed.

Thank you for your time.

Rick Elskamp

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**KRIS W. KOBACH**  
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June 21, 2023

Rick M. Elskamp  
7431 SE 37<sup>th</sup> Street  
Tecumseh, KS 66542

RE: KOMA Complaint – Shawnee County CDDO  
Our File Number CV-22-001613

Dear Mr. Elskamp:

On August 31, 2022, we received your KOMA complaint that you submitted online to our office the same day. In your complaint, you alleged that the “Shawnee County CDDO” violated the Kansas Open Meetings Act (KOMA).<sup>1</sup> Specifically, you alleged that on July 14, 2022, you requested notice of when the CDDO would hold a crisis funding meeting(s) so that you could attend and observe, in particular, the meeting where the team would discuss your daughter’s request for assistance. You alleged you did not receive notice of the meeting. As a remedy, you would like to receive requested records<sup>2</sup> and notice of meetings.

This office has jurisdiction to investigate and resolve complaints alleging a public body or agency violated the KOMA.<sup>3</sup>

We have carefully reviewed your complaint and supporting documents. We also sought information from TARC, Inc. concerning its creation, how it functions as a Community Developmental Disability Organization (CDDO), and the crisis funding committee. TARC, Inc. operates as the Shawnee County CDDO. Following our review, we conclude that TARC, operating as the CDDO, is not a public body or agency within the meaning of the KOMA. As such, it was not required to provide notice of meetings under the provisions of K.S.A. 75-4318(b).

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<sup>1</sup> K.S.A. 75-4317 *et seq.*

<sup>2</sup> We note this is not an available remedy under the KOMA. Moreover, there is nothing in your complaint suggesting you requested records under the Kansas Open Records Act (KORA). Therefore, we need not determine whether TARC, Inc., who operates the Shawnee County CDDO, is subject to the KORA.

<sup>3</sup> See K.S.A. 75-4320(a), 75-4320a(a), 75-4320b, 75-4320d, and 75-4320f.

In support of your position that the Shawnee County CDDO and the crisis funding team are subject to the KOMA, you referenced Attorney General Opinion 94-111. This opinion concluded that Southwest Developmental Services, Inc. (SDSI) was subject to both the KOMA and the Kansas Open Records Act (KORA)<sup>4</sup> because it was established by the board of Finney county commissioners; received and expended public funds (including tax levies, as well as federal and state funds); was subject to close monitoring by the county in budgetary matters; and was also subject to close monitoring by the state with regard to programs provided.

Determining whether an entity is subject to the KOMA is dependent on how it was created, its powers, and the source of its funding. Having considered your argument, as well as the information we received from TARC, we find that the analysis in Attorney General Opinion 2004-34 is instructive.<sup>5</sup> This opinion concluded that Sheltered Living,

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<sup>4</sup> K.S.A. 45-215 *et seq.*

<sup>5</sup> Attorney General Opinion 2004-34, <https://ksag.washburnlaw.edu/opinions/2004/2004-034.htm#txt6>, accessed June 20, 2023. In this opinion, Attorney General Stephan concluded that, “[U]nder K.S.A. 75-4318, the KOMA applies to (1) all legislative and administrative bodies, state agencies, and political and taxing subdivisions (2) which receive or expend and are supported in whole or in part by public funds. The statutory language establishes a two part [sic] test used to determine if the KOMA applies to an entity. Both tests must be met for the KOMA to apply to a not-for-profit corporation.

When applying these tests to a not-for-profit corporation, this office considers the following factors: (a) whether the corporation receives or expends public funds; (b) whether it is subject to control of governmental unit(s); and (c) whether it acts as a governmental agency in providing services or has independent authority to make governmental decisions [citations omitted]. We also note that the Kansas Supreme Court held that the KOMA did not apply to an entity which [sic] had no governmental decision making authority as to how to expend public funds, even though the entity in question worked for a governmental entity pursuant to contract and had contractually agreed to provide services. [*Memorial Hospital Ass’n, Inc. v. Knutson*, 239 Kan. 663 (1986) (board in question is an independent entity that received public funds in exchange for providing a service)]. Thus, receipt of public funds alone does not automatically trigger application of the KOMA. Rather, the entity in question must also somehow be subject to the control of the governmental entity and/or be acting as a governmental agency in providing governmental services.

In examining each of the prior Attorney General Opinions discussing whether a corporation was subject to the KOMA, it is apparent that in order for the KOMA to apply, there must be some degree of governmental input in creating the entity or some on-going governmental control over the entity, as opposed to general regulation of the type of business in question [citations omitted]. . . .

The facts presented in connection with Sheltered Living, Inc. indicate that this not-for-profit corporation was created by private citizens to provide services to other private citizens, that it remains an entity whose daily operations are entirely controlled by private citizens, and that the only source of governmental control that has ever been exercised results from contractual terms or governmental regulation of this particular type of service and business. While Sheltered Living, Inc. receives at least 87% of its funding from local, state or federal governmental entities, at least 75% of that amount is the result of providing services. Moreover, receipt of public funds alone is not dispositive in determining if the KOMA applies to a corporation. Thus, based upon the facts presented, it is our opinion that Sheltered Living, Inc. is not subject to the KOMA. . . .

In summary, Sheltered Living, Inc. is a not-for-profit corporation that provides group living services for special populations. It was created and is operated by private individuals. The services provided are

Inc., a not-for-profit corporation, was not subject to the KOMA because it was created and operated by private individuals, was not created by statute or any governmental entity, and does not provide a strictly governmental service.

According to TARC, it operates the Shawnee County CDDO. TARC was not created by government action. Instead, it was incorporated on June 1, 1954 as a private, stand-alone, not-for-profit corporation, and is governed by a board of directors. It provides services to the Topeka community, including through a contract with the State of Kansas to serve as a CDDO.<sup>6</sup> This is unlike other CDDOs that were established and organized by Kansas counties to provide services to the developmentally disabled community.<sup>7</sup> TARC is subject to annual independent financial audits, and the state conducts periodic contract compliance reviews. It does not have authority to expend public funds. Its crisis funding committee, created to help TARC meet its contractual obligations to send recommendations regarding funding requests to the Kansas Department for Aging and Disability Services (KDADS), is not otherwise subject to governmental audits. KDADS, by contract, specifies the types of services that may be paid for by state funds, as well as management of crisis funding requests. The crisis-funding committee has no governmental decision-making authority to bind TARC or KDADS. All crisis-funding recommendations are subject to review and approval by KDADS.

Based on the totality of the circumstances, TARC and the CDDO are not subject to the KOMA. While arguably it receives public funds, it receives these funds on a contract basis. It is subject to the control of its board and leadership team, and not to the control of a governmental unit(s) such as the state of Kansas. Finally, it does not act as a governmental agency in providing services, nor does it have independent authority to make governmental decisions; rather, its obligations are contractual and the crisis-funding committee only makes recommendations subject to KDADS approval.

Because we conclude that TARC is not a public body or agency within the meaning of the KOMA, it did not violate the KOMA by allegedly failing to provide you with notice of your daughter's crisis-funding meeting. Because it did not violate the KOMA, no further enforcement action is required. We now consider your complaint closed.

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highly regulated and the corporation receives public funds in return for providing such services to clients, however, the corporation was not created by statute or any governmental entity and it does not provide a strictly governmental service. Moreover, a majority of public funds paid to this corporation are paid in connection with services rendered to individuals who are themselves receiving public aid. Receipt of public funds alone does not subject an otherwise private not-for-profit corporation to . . . the KOMA. Thus, it is our opinion that Sheltered Living, Inc. is not a public agency as defined in the Kansas Open Meetings Act. . . ."

<sup>6</sup> CDDOs serve to implement the provisions of the Developmental Disabilities Reform Act. See K.S.A. 39-1801 *et seq.*

<sup>7</sup> See K.S.A. 19-4001 *et seq.*

Letter to Rick M. Elskamp

June 21, 2023

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Our determination is solely about whether there was a knowing or intentional violation of the KOMA based on the unique facts presented. We consider each case on its own facts.

We very much appreciated your patience during our review of this matter. Thank you for contacting the Attorney General's Office.

Sincerely,

OFFICE OF KANSAS ATTORNEY GENERAL  
KRIS W. KOBACH

A handwritten signature in black ink that reads "Lisa A. Mendoza". The signature is written in a cursive style with a long, sweeping tail on the "z".

Lisa A. Mendoza  
Assistant Attorney General  
Director, Open Government Enforcement Unit

cc: Lauren E. Bartee  
Riordan Fincher & Mayo, P.A.  
3735 SW Wanamaker Rd., Suite A  
Topeka, KS 66610-1396



August 30, 1994

**ATTORNEY GENERAL OPINION NO. 94-111**

Mr. John Wheeler  
 Finney County Attorney  
 405 North Eighth Street  
 Garden City, Kansas 67846

Re:

Counties and County Officers -- Mental Health Centers and Services --  
 Community Mental Health Centers and Community Facilities for the Mentally  
 Retarded; Application of KORA and KOMA to Facility Under Contract with  
 County

Public Records, Documents and Information -- Records Open to Public --  
 Southwest Developmental Services, Inc.

State Departments; Public Officers and Employees -- Public Officers and  
 Employees; Open Public Meetings -- Southwest Developmental Services,  
 Inc.

Synopsis:

Based on the information provided, Southwest Developmental Services, Inc. (SDSI), a nonprofit corporation providing services for mentally retarded residents of Finney county, is an agency under the supervision and control of the county and the state department of social and rehabilitation services. SDSI also receives, expends and is supported by various sources of public funds. As such, SDSI is a public agency within the meaning of the Kansas open meetings and open records act and, therefore, is subject to the requirements of those acts. Cited herein: K.S.A. 19-4001; 1993 Supp. 19-4002; K.S.A. 19-4003; 19-4006; 19-4007; 19-4010; K.S.A. 45-216; 45-217, as amended by L. 1994, ch. 293, sec. 4.

\* \* \*

Dear Mr. Wheeler:

As Finney county attorney, you have requested our opinion concerning the applicability of the Kansas open records act (KORA), K.S.A. 45-201 *et seq.*, and the Kansas open meetings act (KOMA), K.S.A. 75-4317 *et seq.*, to Southwest Developmental Services, Inc. (SDSI).

You inform us that SDSI was established in conformance with K.S.A. 19-4001 *et seq.* According to K.S.A. 19-4001, the boards of county commissioners of two or more counties may jointly establish a community mental health center and/or community facility for the mentally retarded. Further, the board of county commissioners of any county which is not a part of a community mental health center is authorized to contract with a community mental health center and/or community facility for the mentally retarded organized in accordance with the provisions of K.S.A. 19-4001 *et seq.*, for such mental health services and/or mental retardation services for the residents of such county as may be mutually agreeable between the governing board of the center and/or community facility for the mentally retarded and the

county commissioners. K.S.A. 19-4010. You inform us that SDSI is a community facility for the mentally retarded having a contractual relationship with thirteen counties.

K.S.A. 1993 Supp. 19-4002 provides in part:

"(a)(1). . . every county which establishes a mental health center or facility for the mentally retarded shall establish a community mental health or mental retardation governing board. Every county which wants to establish such board for the purpose of allowing such board to contract with a nonprofit corporation to provide services for the mentally retarded may establish a mental retardation governing board in accordance with the provisions of this section. Any board established under this subsection shall be referred to as the governing board. The governing board shall be composed of not less than seven members. The members of such governing board shall be appointed by and shall serve at the pleasure of the board of county commissioners of the county.

"(2) When any combination of counties desires to establish a mental health center or facility for the mentally retarded, the chairperson of the board of the county commissioners of each participating county shall appoint two members to a selection committee, which committee shall select the first governing board. Each participating county shall have at least one representative on such board."

The duties of the governing board include election of officers, exclusive control over the expenditure of all moneys, formulation of policies, evaluation of the services provided and reporting to the county commissioners. K.S.A. 19-4003.

K.S.A. 19-4006 further states:

"Upon the creation of any such governing board, all of the jurisdictions, powers, and duties now conferred by law upon the county board of health of such county, or of a joint board of health of such county and a municipality with respect to mental health, shall be withdrawn from such county or joint board of health and conferred upon such governing board."

The services that a nonprofit corporation can provide are: "[p]re-school, day care, work activity, sheltered workshops, sheltered domiciles, parent and community education and, in collaboration with other agencies when practical, clinical services, rehabilitation services, in-service training for students entering professions dealing with the above aspects of mental retardation, information and research." K.S.A. 19-4001.

We are not provided with any information regarding the governing board established by the board of Finney county commissioners or of any other counties contracting with SDSI. A copy of an agreement for services in 1993 bears signatures of the Finney county commissioners and the executive director/vice president of SDSI. We are further uncertain whether Finney county is a part of a community mental health center, under K.S.A. 19-4010. If Finney county is not, then it is authorized to contract with a community facility for the mentally retarded as may be mutually agreeable between the governing board of the community facility for the mentally retarded and the county commissioners. K.S.A. 19-4010.

## OPEN MEETINGS ACT APPLICATION

The KOMA applies to:

"all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and



taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds. . . ." K.S.A. 75-4318(a).

The above language sets forth the two-part test which must be met for a body to be included within the KOMA's provisions: 1) the body is a legislative or administrative agency of the state or one of its political or taxing subdivisions, or is subordinate to such a body; and 2) the body receives, expends or is supported in whole or in part by public funds, or, in the case of subordinate groups, has a parent or controlling body which is so supported.

We have virtually no information on the board of directors of SDSI, regarding its selection, relationship with the county, and responsibilities. These matters are important in deciding whether SDSI is a subordinate body of a public agency for purposes of the KOMA.

If SDSI is a community facility for the mentally retarded organized in accordance with the provisions of K.S.A. 19-4001 *et seq.*, then its governing board is clearly a public agency within the meaning of the KOMA. However, if SDSI is not a community facility, but a nonprofit corporation which contracts to provide certain services for the county, we need further analysis. The board or boards of county commissioners may contract with the nonprofit corporation to provide either mental health services or services for the mentally retarded, or both such services, pursuant to K.S.A. 19-4007. This provision of the statutes also provides that such nonprofit corporation may not deny service to anyone because of inability to pay for the same and it must submit an annual financial report to the board or boards of county commissioners, and an activities report to the secretary of the department of social and rehabilitation services (SRS). Such nonprofit corporation must be approved by SRS in order to receive public funds raised through taxation or public solicitation. K.S.A. 19-4007. In Attorney General Opinion No. 81-171, we stated that a county is empowered by K.S.A. 19-4007 to contract with one or more non-profit corporations for the provision of services to the mentally retarded, and to fund such contracts from the proceeds of the tax levied pursuant to K.S.A. 19-4004.

The term "agency" is not defined in the KOMA. However, prior Kansas Attorney General opinions have identified four criteria to be used in determining whether a body is an agency subject to the KOMA:

"1) If the agency has the authority to make governmental decisions and act for the state, it is covered by an open meetings law. If it only collects information, makes recommendations or renders advice it is not. *McLarty v. Board of Regents*, 231 Ga. 22, 200 S.E. 2d 117, 119 (1973).

"2) Does the agency have independent authority in the exercise of its functions? *Soucie v. David*, 440 F.2d 1067 (D.C.Cir. 1971).

"3) Is the agency subject to governmental audits or otherwise have its business procedures supervised? *Recap v. Indiek*, 539 F.2d 174 (D.C.Cir. 1976).

"4) Finally, one court has defined 'governmental agency' to include corporate instrumentalities that accomplish public ends, both governmental and proprietary. *Ratan Public Services Co. v. Hobbes*, 76 N.M. 535, 417 P.2d 32 (1966)" Attorney General Opinion No. 93-130; 87-143; 84-10; 79-284; 79-219. [The Kansas Supreme Court essentially struck this last test in *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663 (1986).]

We have previously dealt with the issue of application of the KOMA to what appear to be similar non-profit corporations. We have concluded that Cowley County Developmental

Services (CCDS) and Project Independence are administrative bodies which receive and expend public funds, therefore, they were subject to the KOMA. Attorney General Opinion No. 87-188. We distinguished the ruling in Knutson on factual grounds, stating that the hospital was an independent entity not subject to any governmental control, whereas the CCDS and Project Independence must meet SRS guidelines and obtain its approval on their budget and program.

In *State ex rel. Murray v. Palmgren*, 231 Kan. 524 (1982), the court found that the board of trustees of a county hospital which ran the hospital was a public body which was subject to the KOMA. However, if the board leased the hospital property to another, the lessee is not subject to the open meetings requirement of the KOMA if the lessee: 1) has no governmental decision-making authority to expend public funds, and 2) is an independent entity which by contract agrees to provide hospital services under a lease of hospital property from a board of trustees. *Knutson*, 239 Kan. at 672.

SDSI is subject to close monitoring by the county in budgetary matters, and by SRS with regard to programs provided. SDSI provides services for the mentally retarded residents of the county in compliance with the statutes. We conclude that the first prong of the test for KOMA application is satisfied because, SDSI is an agency of the county and SRS, is under the supervision of those governmental entities, providing the same services which could have been provided by the county or SRS.

We are informed that SDSI received \$692,550 from tax levies from the participating counties as authorized by K.S.A. 19-4004, \$4,744,383 in federal funds and \$3,432,551 in state funds in 1994. It is clear that SDSI receives, expends and is supported by public funds, thus satisfying the second prong of the test as well.

#### OPEN RECORDS ACT APPLICATION

The KORA declares it to be the policy of this state that public records of public agencies "shall be open for inspection by any person . . ." K.S.A. 45-216(a). The KORA further provides that the act is to be liberally construed and applied to promote the public policy of openness. K.S.A. 45-216(a); *Harris Enterprises, Inc., v. Moore*, 241 Kan. 59, 63 (1987).

"Public agency" is defined as the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivisions of the state. K.S.A. 45-217(e)(1).

A body is a public agency if it meets one of two tests: (1) the body is the state, a political or taxing subdivision of the state, or an instrumentality of one of these entities, or (2) the body receives or expends and is supported in whole or in part by public funds. Attorney General Opinions No. 93-130 (Kansas turnpike authority subject to the KORA); 88-61 (Arkansas city memorial hospital subject to the KORA). See *Frederickson, Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act*, 33 U. Kan. L. Rev. 205, 206 (1985).

SDSI is a "public agency" within the meaning of the KORA by clearly satisfying the second element. According to the agreement between the board of Finney county commissioners and SDSI, the county was to levy up to \$202,800 upon all taxable tangible property in the county as provided by K.S.A. 19-4004 for the purpose of providing revenue to pay for services for the developmentally disabled residents, and pay the amount to the board of directors of SDSI. It clearly receives and expends and is supported by the public funds in the form of taxes levied by the counties and state and federal grants through SRS.

We are informed that SDSI does not dispute the fact that it receives public funds, however, it argues that the exception to the definition of "public agency" applies. K.S.A. 45-217(e)(2) provides:

"Public agency" shall not include: "(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity. . . ."

It is true that the counties have contracted SDSI to provide certain services to the developmentally disabled residents. However, we do not believe that this exception applies to SDSI under the circumstances. A commentator explains the application of this exception as follows:

"According to legislators, this is designed to exempt vendors who merely sell goods or services to government, for example, the company that sells gravel to the city street department or the bottling company that maintains soft drink machines in the courthouse. Insofar as purchases are made with public money, however, the records of agencies that make the purchases must be open to the public.

"One unresolved question is whether consultants that sell government-like 'services' to the public agency are subject to the act, such as the planning consultant who studies a downtown mall project for a city. The legislators who sponsored the act and the chairmen of committees who handled the bill agree that the definition was not meant to exclude consultants hired to perform 'governmental functions.' Rather, it was designed to exclude businesses that provide necessary but nongovernmental services, such as a janitorial company that contracts to clean city hall. Courts considering this issue should look at the nature of the services provided to determine whether the private contractor is a public agency subject to the act. It would be inappropriate to force a private business to open its records to the public merely because that firm has sold soft drinks, gravel, or janitorial services to a public agency. But when an outside firm is hired to perform a function that is clearly governmental in scope, that firm ought to be required to open its records concerning those services. Otherwise, agencies might escape public scrutiny on any issue merely by hiring outside firms to perform the governmental functions required." Frederickson, *Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act*, 33 *Univ. Kan. L. Rev.* 205, 216-17 (1985).

Pursuant to K.S.A. 19-4001 *et seq.*, the county may establish a community mental health center and community facility for the mentally retarded, or contract with a non-profit corporation to provide such services. The SDSI is not simply selling goods to the county, but it is organized, operated, and financed according to the provisions of the act, in order to provide governmental services to the residents. It is illogical to say that the county may escape public scrutiny merely by contracting the outside firm to provide the same services which could be offered by the county itself.

In determining whether a similar non-profit corporation is a quasi-municipal corporation for the purposes of K.S.A. 9-1401 *et seq.*, we have stated:

"[I]t is apparent that Big Lakes Developmental Center, Inc. is not merely a non-profit corporation which has entered into an arms-length transaction with the four counties to provide services for the developmentally disabled. Rather, through the control of the board of directors by the four county commissions, the center has become an agency of county government, providing services which each county would otherwise provide itself." Attorney General Opinion No. 83-184.

The exception in K.S.A. 45-217(e)(2) is inapplicable to SDSI under the circumstances of the facts provided.

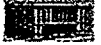
In conclusion, the board of directors of SDSI is a "public body" within the meaning of the KOMA , therefore it must comply with the requirements of the KOMA. Furthermore, SDSI receives, expends and is supported by various sources of public funds and it is not a mere contractor with the government which receives payment in exchange for services and goods. Therefore, the KORA applies to SDSI.

Very truly yours,

ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

Nobuko K. Folmsbee  
Assistant Attorney General

RTS:JLM:NKF:bas



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