

**BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD  
OF THE STATE OF KANSAS**

Kansas Association of Public	)	
Employees (KAPE),	)	
Petitioner,	)	
v.	)	Case No. 75-UDC-2-1996
	)	
Geary Community Hospital,	)	
Respondent.	)	

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**ORDER**

NOW on this 10th day of January, 1996, the Respondent's Motion to Dismiss the above-captioned matter comes on for consideration by the Presiding Officer, Susan L. Hazlett. The Motion to Dismiss was filed by the Respondent, by and through its counsel Mark Edwards, on November 15, 1995. Petitioner, by and through its counsel Kevin A. Graham, filed a Response to Respondent's Motion to Dismiss on December 13, 1995; a Reply to Petitioner's Response was filed by the Respondent's counsel on January 10, 1996.

Before the Motion to Dismiss can be ruled upon, a threshold issue raised by the Respondent in their Reply brief must be considered. Such issue is as follows:

**I. WHETHER OR NOT THE PETITION FOR A UNIT DETERMINATION AND CERTIFICATION IS MOOT DUE TO THE GEARY COUNTY COMMISSION'S REPEAL OF RESOLUTION 32393.**

**K.S.A. 75-4321(c) of the Public Employee Employer Relations Act ("PEERA") provides that:**

Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the *next* complete budget year following such vote. [Emphasis added]

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Both parties have stipulated to the fact that the Geary County Commission ("Commission") elected to come under the provisions of PEERA by adopting Resolution 32393 on March 23, 1993. On December 1, 1995, the Commission rescinded such resolution, as authorized by the above-cited statute. Respondent contends that the jurisdictional issue of whether Geary Community Hospital ("Hospital") is subject to the provisions of PEERA is now moot, due to the aforesaid rescission of Resolution 32393.

Respondent admits in their Reply brief that Geary County's budget year begins January 1 of each year. As the vote to rescind the resolution occurred on December 11, 1995, the effective date of the rescission will be "the termination of the next complete budget year following such vote," or in other words, January 1, 1997.

THEREFORE, Geary County continues to be subject to the provisions of PEERA until January 1, 1997, and the jurisdictional issue before this Presiding Officer is not moot.

The remaining issue as it relates to the Respondent's Motion to Dismiss shall be considered as follows:

**II. WHETHER THE GEARY COUNTY COMMISSION AND THE GEARY COMMUNITY HOSPITAL ARE SEPARATE AND DISTINCT LEGAL ENTITIES, THEREBY EXCLUDING THE GEARY COMMUNITY HOSPITAL FROM THE PROVISIONS OF THE P.E.E.R.A.**

Findings of Fact

1. Geary Community Hospital, in Junction City, Geary County, Kansas, was established by the Geary County Commission, and is operating as a county hospital, pursuant to K.S.A. 19-4601 *et seq.* (Resp.Brief, p. 2; Hospital Bylaws, p.1)
2. The Hospital's Board of Trustees consists of persons appointed by the Geary County

Commissioners and have all the powers and duties which are bestowed upon the board of a county hospital by state statute. (Hospital Bylaws, pp. 1,4)

3. The Hospital's Board of Trustees established and adopted the Bylaws of Geary Community Hospital on or about April 26, 1994.
4. The Geary County Commissioners passed a resolution on March 23, 1993, adopting and electing to come under the provisions of PEERA. (Resp. Brief, p. 1)
5. The Board of Trustees of the Hospital has never adopted a resolution adopting and electing to come under the provisions of PEERA. (Bradley Affidavit)

#### Conclusions of Law

Under PEERA, specifically K.S.A. 75-4321(c), the Kansas legislature has provided that

the governing body of any public employer, other than the state and its agencies, by a majority vote of all the members *may elect* to bring such public employer under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote. [Emphasis added]

K.S.A. 75-4322(f) defines "public employer" as "every governmental subdivision, including any county, ...board, ... or instrumentality or other similar unit whose governing body exercises similar governmental powers..." Petitioner would have Geary County be the public employer anticipated in the aforesaid statutory definition. However, K.S.A. 19-4610(b), in the Hospital and Related Facilities Act, refers to the people who work for a county-owned hospital

as "hospital employees" rather than "county employees." Furthermore, in the instant case, the employees are paid through the Hospital, not through the county, as evidenced in the Hospital's audit report and the affidavit accompanying the audit signed by John Harris, CPA. Said affidavit also states that "Geary Community Hospital has its own federal ID number..." See Harris Affidavit, p. 2. Geary Community Hospital, as a county-owned hospital, is the public employer for the purposes of PEERA, specifically K.S.A. 75-4321(c).

K.S.A. 75-4322(g) defines "governing body" as "the legislative body, policy board or other authority of the public employer possessing legislative or *policymaking* responsibilities pursuant to the ... laws of this state." [Emphasis added] Therefore, the question becomes whether the Commission is the governing body of the Hospital, or whether the Hospital Board of Trustees is the governing body possessing legislative or policymaking responsibilities for the Hospital.

The Kansas legislature has enacted a body of law, as mentioned above, specifically for the administration of county-owned hospitals in K.S.A. 19-4601, *et seq.* The first paragraph in K.S.A. 19-4605(a) mandates that the Commission "provide for the management and *control* of any ... county hospital ... by a board." (Emphasis added) The legislature then explicitly sets out the powers and duties of the board to enable it to manage and control the hospital. Such powers and duties include the adoption of bylaws; exclusive control of the expenditures of all hospital moneys; supervision, care and custody of all hospital property; establishment of pension and deferred compensation plans; and procurement of contracts insuring hospital employees. See K.S.A. 19-4610. All hospital moneys are accounted for in separate funds or accounts of the hospital. See K.S.A. 19-4608. A hospital board also has the power to contract, to initiate legal

actions, and to use whatever funds the board deems necessary for recruitment of staff. See K.S.A. 19-4611.

The above-cited statutory authority of a county-owned hospital would appear to be support for the proposition that the board of a county-owned hospital, such as Geary Community Hospital, is the policymaking governing body of the hospital.

Both parties have also cited Attorney General Opinion 85-106, which also addresses the issue of the authority of the board of a county-owned hospital. The Petitioner specifically quotes from the opinion,

*However, the hospital board is more than such an agency. While the county commission took the initial step in creating the board, it did so in accordance with procedures established by statute, and thus merely triggered the operation of K.S.A. 19-4601 et seq. Thus, the underlying authority for the hospital board is not the county commission, but the legislature, and the county commission cannot limit the ability of the trustees to carry out their statutory duties under the act.. While K.S.A. 1984 Supp. 19-4610(a) requires the board to comply with resolutions of the county commission, this refers to resolutions of a general nature, such as affirmative action, civil service or nepotism, and not to matters specifically involving the operation of the hospital, which are left to the control of the board... While the board is subject to resolutions of the county commission [K.S.A. 1984 Supp. 19-4610(a)], such control is no greater than that possessed by the commission over any other county office, and extends to matters of county-wide concern such as civil service.*

The Petitioner is making the argument that any decision made by the county commission concerning the county's civil service employees extends to the hospital employees and, therefore, the county's resolution to elect to come under PEERA also extends to the hospital employees.

The Respondent's argument, on the other hand, is more convincing that the reference in the

Attorney General's Opinion to civil service cannot be interpreted in such a way. PEERA is a separate act from the Civil Service Act, and does not contain any references to being subject to any provisions in the Civil Service Act.

Although neither party addressed it, it is also important to analyze the hospital budget process provided for in K.S.A. 19-4607(c), as follows:

Prior to June 1 of each year, the [hospital] board shall prepare a budget showing the amount it deems necessary to operate, equip, maintain and improve the hospital for the ensuing fiscal year and the amount of that portion thereof that it deems necessary to be raised by the tax authorized under K.S.A. 1984 Supp. 19-4606, and shall submit its proposed budget to the [county] commission...If the commission does not approve the proposed budget within 10 days after receipt thereof, it shall return the budget to the board. Upon receipt of the returned budget, the board shall consider amendments or modifications...Within 10 days after receipt of the returned budget, the board shall resubmit its proposed budget, with *or without* amendment or modification, to the commission. Within 10 days after resubmission of the proposed budget, the commission *shall* approve, or amend or modify and approve as amended or modified, such proposed budget. The commission *shall* adopt the proposed budget as approved and shall make the same a part of the regular county budget. In the case of an elected board, submission of the budget to the commission shall not be required. [Emphasis added]

K.S.A. 19-4607(c) does not appear to require a hospital to amend or modify its budget upon a request of the commission, yet contrarily, the commission is required to adopt the hospital's budget. However, the commission does appear to have the authority to amend or modify the final hospital budget before they adopt it. Although possibly misleading, a fair interpretation of the above statute would appear to be that the legislature did not intend to give any actual control over the hospital moneys to the county commission simply by requiring that

the hospital submit its proposed budget to the commission. To determine otherwise would appear contrary to the intent of the entire act. As elected officials, the commission appears to have the obligation to ensure that the hospital's budget is in the county's best interests and retains some power over the hospital's budget to achieve that end.

The above-cited statute also refers to the "taxing authority authorized under K.S.A. 1984 Supp. 19-4606. That statute gives the commission, unless the hospital board is an elected board, the authority to levy taxes for the purpose of "operating, maintaining, equipping and improving any hospital managed and controlled under the provisions of this act..." For the purposes of PEERA, K.S.A. 75-4321(c) and K.S.A. 75-4322(g) make reference to the governing body which has legislative and policymaking authority--there is nothing in PEERA requiring the governing body to be the taxing authority.

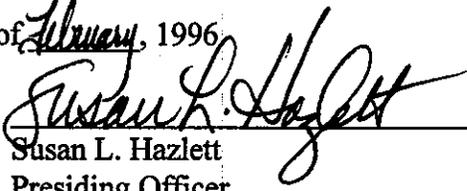
The Public Employee Relations Board has jurisdiction over a public employer, other than the state or its agencies, only after it has elected to come under the provisions of PEERA. Without jurisdiction over the public employer, the Board may not entertain a petition for unit determination or certification under PEERA.

The Public Employee Relations Board has previously held that if [a county-owned healthcare facility] is governed by an independent board or commission, it may separately elect to come under PEERA. See PERB Case No. 75-UDC-1-1991.

Since the evidence supports the proposition that Respondent, Geary Community Hospital, has not voted to come under the provisions of PEERA, it must be concluded that Respondent is not within the jurisdiction of the Public Employee Relations Board and Petitioner's petition must

be dismissed for lack of jurisdiction over the Hospital.

IT IS SO ORDERED this 27<sup>th</sup> day of February, 1996

  
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Susan L. Hazlett  
Presiding Officer  
Public Employee Relations Board  
1430 SW Topeka Blvd., 3rd Floor  
Topeka, KS 66612

### NOTICE OF RIGHT TO REVIEW

This Initial Order is the official notice of the presiding officer's decision in this case. The Order may be reviewed by the Public Employee Relations Board, either on the Board's own motion, or at the request of a party, pursuant to K.S.A. 77-527. The right to petition for a review of this Order will expire fifteen (15) days from service of the Order, plus three (3) days for mailing. See K.S.A. 77-531, and K.S.A. 77-612. To be considered timely, an original Petition for Review must be received no later than 5:00 p.m. on the 18<sup>th</sup> day of March, 1996, addressed to the Public Employee Relations Board, 1430 SW Topeka Blvd., Topeka, KS 66612.

### CERTIFICATE OF MAILING

I, Sharon Tunstall, Clerk of the Public Employee Relations Board, of the Kansas Department of Human Resources, hereby certify that on the 28<sup>th</sup> day of February, 1996, a true and correct copy of the above and foregoing Order was deposited in the U.S. Mail, first class, postage prepaid, properly addressed to the following:

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