

May 24, 1973

OPINION LETTER NO. 180
Answer by Letter - Klaffenbach

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Honorable Donald J. Hancock
State Representative, District 153
301 State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Hancock:

This letter is in response to your question asking:

"When a hospital district has been established under Chapter 206, RSMo 1969, and a fixed hospital location has been established pursuant to Section 206.070, may the Board of Directors under the authority of Section 206.110 or any other authority, change the location of such hospital."

Section 206.070, RSMo, provides:

"Each legal voter residing within the territory shall have the right to cast a ballot at the election. The ballot shall be in substantially the following form:

PROPOSITION

Shall there be organized in the Counties of, State of Missouri, a Hospital District for the establishment and operation of a hospital to be located at in County, Missouri, and having the power to impose a property tax not to exceed the annual rate of fifteen cents on

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the hundred dollars assessed valuation without voter approval, and such additional tax as may be approved hereafter by vote thereon to be known as '. Hospital District' as prayed for by petition filed with the County Clerk of County, Missouri, on the day of . . . , 19 . .

YES
NO

(Instructions to voters: To vote in favor of the foregoing proposition, place a cross mark (X) in the square opposite the word YES. To vote against the proposition, place a cross mark (X) in the square opposite the word NO.)"

Section 206.110, RSMo, provides in part:

"1. A hospital district shall have and exercise the following governmental powers, and all other powers incidental, necessary, convenient or desirable to carry out and effectuate the express powers:

(1) To establish and maintain a hospital and hospital facilities within its corporate limits, and to construct, acquire, develop, expand, extend and improve any such hospital or hospital facility."

Thus there appears to be a conflict between the form of the ballot which is required to be in substantially the form provided in Section 206.070 and the provisions of subsection 1(1) of Section 206.110, in that the ballot form sets out the particular location of the hospital and the substantive provisions authorize the hospital district to establish a hospital within its corporate limits.

We are inclined to the view that the form of the ballot is directory and not mandatory, that its acceptance by the voters does not bind the board to any particular location within the district, and that the board has the power to locate the hospital anywhere within the district. We base this view on our belief that the substantive provisions of Section 206.110 control and on the fact that nothing in the form of the petition to

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create the district, Section 206.020, RSMo, or in the subsequent procedure prior to calling the election, gives any indication that a site is to be fixed by the voters.

However, in order to be completely fair in our appraisal of the situation we also wish to note that we have considerable uncertainty as to how the Missouri courts would rule on the question because we find no direct precedent to guide our decision and view the applicable rules of statutory construction as somewhat conflicting as applied in the premises.

In a related but distinguishable case, State v. Wenom, 32 S.W.2d 59, 62 (1930), the Missouri Supreme Court refused to require a school board to construct a school on a site selected by the voters in an election authorizing the issuance of bonds to purchase a school building. There, however, the statute did not prescribe a form of ballot designating the site and the court held that the board's authority to locate the school building according to the board's discretion was controlling. In the premises, the ballot form, as we have noted, for some reason which we are unable to ascertain, specifies the site. In this respect it is our understanding that some of the provisions which pertain to hospital districts in our laws were taken from the Illinois statutes. This is, from our research, apparently true of the above provisions relative to the powers of the board of directors of the hospital district to select a site, although the form of the ballot in Illinois does not specify the site. Further, by comparison, the provisions of the Nursing Home District laws enacted in 1963 subsequent to the Hospital District laws enacted in 1961, contain a ballot form, Section 198.260, RSMo, which states that the nursing home will be located within the boundaries of the proposed district, and again, many of the related substantive provisions are similar to those of the Hospital District laws.

You have also indicated that on two occasions propositions have been submitted to the voters to designate the site elsewhere and that the propositions were defeated. Thus it appears that the matter is of considerable local controversy and that litigation respecting the question is probable. Our views, of course, do not have the force of law, and it is our suggestion that a court action be brought to resolve the matter.

Very truly yours,

JOHN C. DANFORTH
Attorney General