

FILE

Subject

Selby Soward
vs. Tech.

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

January 7, 1974

Opinion No. 74- 5

Selby S. Soward
Zuspann, Soward, Whalen & Burr
Professional Building
P.O. Box 549
Goodland, Kansas 67735

Re: Northwest Kansas Area
Vocational-Technical School

Dear Mr. Soward:

In your recent letter to this office you inquired about the necessity for competitive bidding and the issuance of revenue bonds for construction of buildings as authorized under K.S.A. 76-6a13. In that statute certain definitions are established thus:

"(a) 'Board' means the state board of regents or a board of regents of a municipal university . . . , or the board of control of any such area vocational-technical school, or the board of trustees of any community junior college.

* * *

"(f) 'Building' when heretofore or hereafter constructed by a board other than the state board of regents, means and includes one or more dormitories"

We presume that the county in which the institution is located meets the statutory population requirements.

With these definitions in mind you are referred to K.S.A. 1972 Supp. 76-6a17 which deals with various factors concerning revenue bonds. After dealing specifically with requirements for the state board of regents, the statute states:

"Bonds issued under the provisions of this act by any board other than the state board of regents may bear such rate or rates of interest, not exceeding the maximum rate of interest prescribed by section 104 [10-1009] of this act, being provided by resolution or resolutions adopted by such board; and such bonds issued by such board other than the board of regents may be sold without competitive bidding in such manner as may be determined by the board to be for the best interests of the institutions involved." [Emphasis supplied.]

Under this provision, a board, as defined by the act, may proceed to issue revenue bonds in the manner deemed to be in the best interest of the institution, and without competitive bidding, if it so chooses.

We note your reference to K.S.A. 76-6760. That statute is applicable to contracts made by the board of education of any school district. It would not apply to a vocational-technical school unless such school is governed by a board of education. However, the 1973 Kansas State Plan for Vocational Education, prepared as directed under K.S.A. 72-4413, provides:

"1.9 Construction Requirements

This State Plan provides assurance that the following requirements will be complied with on all constructive projects assisted under Parts B and E of the Act. [See 20 U.S.C.A. § 1263.]

- 1.91 Labor Standards
- 1.92 Equal Employment Opportunity
- 1.93 Avoidance of Flood Hazards
- 1.94 Accessibility to Handicapped Persons
- 1.95 Competitive Bidding

All construction contracts shall be awarded to the lowest qualified bidder on the basis of open competitive bidding except as described in K.S.A. 72-6760."

Therefore, although bonds may be sold without competitive bidding, the construction contracts must be let by competitive bids.

You further inquire about risk to bond holders should the legislature change the structure of the school. Any answer to that question would be plainly speculative. In K.S.A. 76-6a13(d) provision is made for payment of revenue bonds:

"(d) 'Revenue bonds' means bonds issued hereunder for the purposes herein authorized and payable

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as to both principal and interest solely and only out of the income and revenues arising from the operation of the building for which such bonds are issued,"

The Kansas Supreme Court in construing an action by the state board of regents stated in State, ex rel., v. Board of Regents, 167 Kan. 587:

"The endorsement on the bond plainly states the bond is a contract between the board and the holder thereof. The bond and the publication notice, in substance, clearly disclose the bond is not, and shall not become, an obligation of the state, . . . ; that it cannot be paid directly or indirectly from the proceeds of any tax levy but is payable solely and only from the revenue and income derived from the operation of a certain dormitory or dormitories and the facilities of the college;"

"In view of the act itself and the plain terms of the bond, a contract between the board and bond purchaser, we think no bondholder could logically contend the state, the college, the board, or any official member or employee of the board becomes obligated to pay the indebtedness represented by the bond."

We hope the above information will be of assistance to the board in its determinations. If we may be of further help, please feel free to contact us.

Yours very truly,



VERN MILLER
Attorney General

VM:DMH:jsm

cc: Mr. Don Barry
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