

Subject

FILE  
*Exemption*  
*City - Property*  
*Leasing*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

February 1, 1974

Opinion No. 74- 52

Mr. David S. Lord  
City Attorney  
108 West Washington  
Arkansas City, Kansas 67005

Re: Exempt status of income earned on bonds issued under K.S.A. 1973 Supp. 12-1757, et seq.; subleasing by city under same statutes.

Dear Mr. Lord:

You inquire of this office whether income earned on revenue bonds issued by a municipality pursuant to K.S.A. 1973 Supp. 12-1757, et seq., is exempt from income taxation.

For purposes of computing that amount upon which state and federal income tax is computed, incomes earned on municipal bonds are categorically excluded from "gross income." 26 U.S.C.A §103(a) provides in pertinent part:

"(a) General Rule--Gross income does not include interest on--  
(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; . . ."  
(latter emphasis added)

Specifically, income derived from revenue bonds issued by a city is treated as an exemption under the definition for obligations of any political subdivisions. [See, Fairbanks, Morse & Co. v. Harrison, 63 F. Supp. 495 (D.C. Ill. 1945); State v. Dade County, 250 So.2d 875 (Fla. 1971)].

Mr. David S. Lord  
February 1, 1974  
Page 2

Correlative to the federal exclusions are the provisions of K.S.A. 1973 Supp. 79-32,117 and K.S.A. 1973 Supp. 79-32,138. However, these statutes incorporate an important distinction which operates as an addition to federal adjusted gross income, to wit:

"Interest income, to the extent that the same is not included in federal adjusted gross income, or obligations of any state or political subdivision thereof: Provided, however, that to the extent that interest income on obligations of this state or a political subdivision thereof is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income." K.S.A. 1973 Supp. 79-32,117 (b)(i). (Note reference to this provision in K.S.A. 1973 Supp. 79-32,138(b)).

In view of this provision, we find no authority express or implied in Chapter 122, Laws of Kansas, 1965 (K.S.A. 1973 Supp. 12-1757, et seq.) wherein bonds issued under the authority thereof are granted an exclusionary status with respect to this state's income tax liability. Accordingly, it is our opinion that where income from such bonds are exempt from federal income tax liability, they are not so exempt under the Kansas Income Tax Act. Consequently, individuals or corporations paid interest on bonds issued pursuant to K.S.A. 1973 Supp. 12-1757, et seq., must pay Kansas income tax upon said interest.

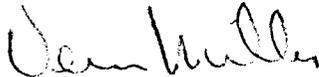
You further inquire whether a city as lessee of a building funded and constructed pursuant to K.S.A. 1973 Supp. 12-1757, et seq., could sublease the facility to a recreation commission created under Article 19 of Chapter 12, Kansas Statutes Annotated. K.S.A. 1973 Supp. 12-1763 provides in part:

"The public building commission shall have the authority to rent all or any part of its buildings or other facilities to . . . any municipal corporation, quasi-municipal corporation, political subdivision or body politic, or agency thereof, doing business, maintaining an office or rendering a public service in the county seat or county in which the commission was organized . . . ."

Mr. David S. Lord  
February 1, 1974  
Page 3

Inasmuch as the Legislature has empowered the city government and/or school districts with authority to create and delegate powers to a recreation commission which provides a public service (i.e., to administer to public recreational needs), it is the opinion of this office that such a body is essentially a quasi-municipal corporation where such commission, as constituted by the Legislature, exercises in a prescribed area a very limited number of corporate functions. (See, 35A Words and Phrases, "Quasi-Municipal Corporation," 481-484; 62 C.J.S. Municipal Corporations §1.) Accordingly, we see no limitation upon a city to sublease to a recreation commission a building which it leases from a public building commission where the same recreation commission is itself initially entitled under K.S.A. 1973 Supp. 12-1763 to lease directly from the public building commission.

Very truly yours,



VERN MILLER  
Attorney General

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