

FILE

Subject

*Bonds
General*

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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

April 30, 1974

Opinion No. 74-134

Mr. John T. Glassman, Deputy Director
State Economic Opportunity Office
State Capitol Building
Topeka, Kansas 66612

RE: Revenue bonds for low-income housing projects.

Dear Mr. Glassman:

You have requested an opinion from this office relative to the legality of Kansas municipalities issuing revenue bonds to finance low-income housing projects designated public utilities. You advise the municipalities anticipate retiring these revenue bonds from their utilities' rental income.

Municipalities authorized under Kansas law to issue general obligation bonds for the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of any utility are also empowered to issue and sell revenue bonds in payment of the cost of such utilities or improvements thereto. (K.S.A. 1973 Supp. 10-1202) What becomes initially important is the definition of the term "utility." K.S.A. 10-1201 in pertinent part provides:

"'Utility' as used in this act means any publicly owned utility, instrumentality or facility of a revenue producing character including but not limited to plans [plants], facilities and instrumentalities for the purpose of supplying natural or manufactured gas, water or electric light and off-street parking facilities and sewage disposal plants, facilities and interceptor sewers."
[Emphasis added.]

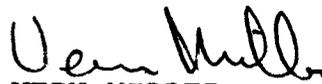
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This office has long taken the position that the term "utility" as used in the above statute was intended by the legislature to be quite broad in its application. Consequently wide access to this financing capability has facilitated the funding of a number of projects not specifically designated in this statute, i.e. public golf courses and homes for the aged. We believe another definition also becomes necessary. The word "facility" is defined in Webster's New Third International Dictionary as "something which promotes the ease of any action, operation, transaction, or course of conduct * * * something (as a hospital, machinery, plumbing) that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end." In view of these definitions it is the opinion of this office that low-income housing properly falls within the definition of "utility" as used in Chapter 10, Article 12, Kansas Statutes Annotated. Accordingly, where such low-income housing projects of a revenue producing character are initiated by municipalities authorized to issue general obligation bonds for the purposes set out in K.S.A. 1973 Supp. 10-1202, then said municipalities are lawfully empowered to issue revenue bonds to finance such endeavors.

You further advise of a plan to guarantee revenue bonds issued for low-income housing by using Federal General Revenue Sharing monies to guarantee the initial 25% of the bonds' face value, and the remaining 75% face value by a private mortgage insurance company. K.S.A. 10-1205 provides in part that "[s]uch revenue bonds are hereby made a lien on the revenues produced from such utility but shall not be general obligations on the issuing municipality" It is the opinion of this office that where these revenue bonds are guaranteed by federal revenue sharing funds a general obligation in fact is created upon the issuing municipality in as much as the guarantee creates an obligation or lien upon the income of the municipality and not on the revenues of the utility. Accordingly, such a guarantee is prohibited by K.S.A. 10-1205. Further, the guarantee by a private mortgage insurance company would be permissible only so long as it does not create a general obligation on the issuing municipality.

We hope this has answered your inquiry, and if we may be of further assistance in this matter please feel at liberty to contact us.

Very truly yours,


VERN MILLER
Attorney General

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