

FILE

Subject

Bonds
Industrial Revenue

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

July 3, 1974

Opinion No. 74-220

Mrs. Ruth Lemon
City Commissioner
City Offices
4th and Pine Streets
Pittsburg, Kansas 66762

RE: Industrial revenue bonds; K.S.A. 12-1740, et seq.

Dear Mrs. Lemon:

You have requested an opinion from this office relative to the utilization of certain proceeds derived from the sale of industrial revenue bonds pursuant to K.S.A. 12-1740, et seq, and as amended. Specifically you ask whether Kansas law permits the use of industrial revenue bond proceeds in the manner indicated by the following clause extracted from a proposed bond ordinance presently being considered by the city of Pittsburg:

"Monies in the SUPPLEMENTAL CONSTRUCTION FUND, the SUPPLEMENTAL PRINCIPAL AND INTEREST ACCOUNT (including accrued interest received on the Additional Bonds and escrowed interest during construction) and the SUPPLEMENTAL BOND RESERVE ACCOUNT, shall all be invested by Trustee, where feasible to do so and upon direction of the Tenant, in Certificates of Deposit of state or national banks, insured by an agency of the United States Government, or in notes or other direct obligations of the United States Government, or in notes or other direct obligations of the United States Government or an agency thereof, at such times and in such amounts and with such maturities

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as may reasonably be expected to result in funds being available when required. All income from such investments shall be paid over, at least quarterly, by the Trustee directly to Tenant; provided that, no such payments of income shall be made to Tenant at any time when Tenant is in default of the payment of any monies under the Lease or this Supplemental Lease, or is in default in any other way under said Lease and said Supplemental Lease, and in the event of any such default all income from investments shall be used by the Trustee to wholly or partially cure any such default and unless and until such default is wholly cured, no payments of such income shall be made to Tenant."

K.S.A. 1973 Supp. 12-1740 provides:

"It is hereby declared that the purpose of this act shall be to promote, stimulate and develop the general economic welfare and prosperity of the state of Kansas through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and of recreational development in the state; to encourage and assist in the location of new business and industry in this state and the expansion of existing business and health development; and to promote the economic stability of the state by providing greater employment opportunities, diversification of industry and improved physical and mental health, thus promoting the general welfare of the citizens of this state by authorizing all cities of the state to issue revenue bonds, the proceeds of which shall be used only to purchase or construct, maintain and equip buildings and acquire sites therefor and to enlarge or remodel buildings and equip the same, for agricultural, commercial, hospital,

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industrial and manufacturing facilities
and to enter into leases or lease-purchase
agreements with any person, firm or cor-
poration for said facilities. [K.S.A.
12-1740; L. 1969, ch. 85, §1; April 18.]"
[Emphasis supplied.]

Further your attention is drawn to the provisions of K.S.A.
1973 Supp. 12-1741:

"Any city shall have power to issue revenue bonds, the proceeds of which shall be used only to purchase, construct, reconstruct, equip, maintain or repair buildings and to acquire sites therefor, and to enlarge or remodel said buildings and equip the same, for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing facilities with power to enter into leases or lease-purchase agreements by ordinance with any person, firm or corporation for said facilities, said facilities to be constructed in any city or its environs without limitation as to distance, providing the governing body of said city declares that said facility, if in being, would promote the welfare of the city. [K.S.A. 12-1741; L. 1969, ch. 85, §2; April 18.]"

Clearly these statutes mandate that proceeds from the issuance of industrial revenue bonds are categorically limited in application to the maintenance, equipping, construction, remodeling, enlarging or acquiring sites for construction of buildings or structures used to further the purpose of the industrial revenue bond act. The issue thus presented: does K.S.A. 1973 Supp. 12-1740, et seq, authorize the payment of interest moneys derived from the investment of industrial revenue bond proceeds to the tenant pursuant to the proposed city ordinance, supra?

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The industrial revenue bond act does not provide a definition of the term "proceeds." However, Webster's Third New International Dictionary (1966) defines "proceeds" as: "a: what is produced by or derived from something (as a sale, investment, levy, business) by way of total revenue: the total amount brought in: YIELD, RETURNS." Employing this definition then with the above statutes in conjunction with the activity contemplated by the proposed city ordinance, supra, this office can not but conclude that the ultimate use of the industrial bond proceeds (via investment of idle funds) by producing revenue for the sole benefit of the tenant is not authorized by K.S.A. 1973 Supp. 12-1740 and K.S.A. 1973 Supp. 12-1741.

If we may be of further assistance to you in this matter please feel at liberty to contact us.

Very truly yours,



VERN MILLER
Attorney General

VM:JPS:bw