

Subject Bonds
Leaving and Bridges
Copy to _____



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

July 26, 1974

Opinion No. 74- 250

Mr. Norman E. Gaar
Senator Seventh District, Johnson County
2340 West 51st Street
Westwood, Kansas 66205

RE: K.S.A. 1973 Supp. 10-201, 10-202 and 10-203.

Dear Senator Gaar:

You have requested an opinion from this office relative to an interpretation of K.S.A. 1973 Supp. 10-201, 10-202 and 10-203. Specifically you inquire whether a county or other local governing body pursuant to the above cited statutes may issue bonds to build, purchase or repair bridges within their respective municipality by calling an election for that purpose on their own initiative (K.S.A. 1973 Supp. 10-202), or whether the governing body may proceed only to call an election for the issuance of bridge bonds upon receipt of a petition as set out in K.S.A. 1973 Supp. 10-203.

K.S.A. 1973 Supp. 10-201 provides:

"The board of county commissioners of any county, the governing body of an incorporated city, and the trustee, clerk and treasurer of any township in this state are hereby empowered to issue the bonds of such county, city or township for the purpose of building, purchasing or repairing bridges, free or otherwise, within such county, city or township."

Mr. Norman E. Gaar
Page Two
July 26, 1974

Qualifying the above statute K.S.A. 1973 Supp. 10-202 provides in pertinent part:

"Before any bonds shall be issued, as herein provided, the same shall be ordered by a vote of the qualified electors of such county, city, or township. All bonds issued under the provisions of this act shall be issued in the manner provided by the general bond law"

The apparent conflict arises with the provision of K.S.A. 1973 Supp. 10-203 which states:

"When a petition, signed by the electors of any county, city or township equal in number to not less than five percent (5%) of the qualified electors of such county, incorporated city or township, shall be presented to the board of county commissioners of such county, the governing body of such county, the governing body of such city, or the trustee, clerk and treasurer of such township, asking that a vote be taken upon the question of building, purchasing or repairing a bridge such officers shall, within ten (10) days after the presentation of such petition, call an election as provided by law to vote on such proposition."
[Emphasis added]

It is suggested that the specific language of this statute indirectly qualifies K.S.A. 1973 Supp. 10-201 and 10-202 since it mandatorily directs that each governing body "shall . . . call an election" upon receipt of the proper petition, thus limiting the availability of 10-201 to only those occasions where a petition is first presented. We are not so persuaded.

A close examination of K.S.A. 1973 Supp. 10-202 in conjunction with K.S.A. 1973 Supp. 10-203 leads this office to the conclusion that the apparent legislative intent manifested by these statutes is that two separate and distinct procedures are anticipated to call an election for determining whether or not a municipality should issue bonds to finance the construction, purchase or repair of a bridge: (1) at the initiative of the

Mr. Norman E. Gaar
Page Three
July 26, 1974

governing body, or (2) at the initiative of the electorate. In either procedure the governing body where ordered by an election held in accordance with the general bond law is empowered with the authority to issue bonds of the municipality for a bridge project (K.S.A. 1973 Supp. 10-201). We see no ambiguities with the language employed in these statutes. K.S.A. 1973 Supp. 10-202 qualifies the primary authority granted by K.S.A. 1973 Supp. 10-201 by requiring the governing body to call an election where it desires to issue bonds to finance a particular bridge project. K.S.A. 1973 Supp. 10-203 presents an additional but distinctly alternative qualification to K.S.A. 1973 Supp. 10-201 by requiring the governing body to call an election for bridge bonds when an electorate presents it with the proper petition-- a contingency unrelated to a decision of the governing body. Further, we find no legislative intent manifested in the wording of K.S.A. 1973 Supp. 10-203 which would indicate that a petition from the electorate is imperative for all bridge bond elections.

Accordingly it is the opinion of this office that an election required for bonds issued pursuant to K.S.A. 1973 Supp. 10-201, et seq., may properly be called at either the initiative of the electorate or the governing body.

We hope this answers your inquiry, and if we may be of further assistance to you please feel at liberty to contact us.

Very truly yours,



VERN MILLER
Attorney General

VM:JPS:bw