

Subject

Copy to

*Cities Public
Improvements General*



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

November 13, 1974

Opinion No. 74-360

Mr. Robert F. Stover
McPherson City Attorney
Box 732
McPherson, Kansas 67460

Dear Mr. Stover:

You inquire whether the City of McPherson and McPherson County may, in a joint undertaking, participate in a project for the building of roads and for construction of drainage works. The proposed project involves land in an area of present and future industrial development, part of which is within or soon will be annexed to the city, and in which the city and county are mutually interested. The project may be supported in part by a federal grant, and the question is further raised whether, under state law, the city and county could join in the project through an interlocal agreement pursuant to K.S.A. 12-2901 et seq., although only one of the parties, either the city or county, applied singly for available federal funds.

K.S.A. 1973 Supp. 12-2904(a) states in pertinent part thus:

"Any power or powers, privileges or authority, exercised or capable of exercise by a public agency of this state relating to public improvements, public utilities, police protection, libraries, data processing services, building and related inspection services, flood control and storm water drainage, sewage disposal, refuse disposal, park and recreational programs and facilities, ambulance service, or fire protection, may be exercised and enjoyed jointly with any other public agency of this state or with any private agency,...."

Subparagraph (b) states thus:

"Any public agency may enter into agreements with one or more public or private agencies for joint or cooperative action pursuant to the

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provisions of this act. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force."

The proposed joint undertaking involves the construction of roads or streets, which we have long considered to be "public improvements" as enumerated above, and drainage works, which are likewise within the category of undertakings enumerated in the act.

Any "public agency," which includes both cities and counties, have the power to undertake jointly any project which they have the power to undertake separately. Cities enjoy constitutional powers of home rule under Article 12, § 5 of the Kansas Constitution. Subsection (b) of that amendment commences thus:

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions...."

The building of roads or streets, and the construction of drainage works within the city, are cities projects of local concern, for which powers of the cities may be exercised under this section. Counties now enjoy statutory powers of home rule, under ch. 110, L. 1974. Section commences thus:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate...."

From your conversation with my staff, we understand that the concern which has been raised has not been with the authority of the city or county to act independently, but only whether they might join together in the project. K.S.A. 12-2901 et seq., provides express statutory authority in this regard, and in addition, the powers of self-government which both the cities and counties of this state enjoy, under the constitutional and statutory enactment, respectively, provide an additional and independent basis of authority for such undertakings.

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If you have further questions concerning this matter,
please feel free to call upon us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:tp

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