



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 5, 1975

Opinion No. 75-94

Mr. Wilbur S. Stakes, Jr.
Attorney At Law
100 Highland Road
Lansing, Kansas 66043

Dear Mr. Stakes:

You requested an opinion from this office concerning whether the city, through use of industrial revenue bonds, may finance a recreational facility to be leased to a private country club which restricts membership. I will assume that these unspecified restrictions to which you refer are racial in nature.

This matter is controlled by the decision in Burton v Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856 6 L Ed 2d 45 (1961). In that case, the City of Wilmington, Delaware, pursuant to specific statutory authority, created the Wilmington Parking Authority to provide adequate parking facilities for the public.

The construction costs for the first parking facility were obtained through both bank loans and issuance of revenue bonds. Shortly thereafter, it was concluded that revenues from parking would be insufficient to meet the Parking Authority's outstanding obligations. The building space was then allocated between parking and space to be leased to commercial enterprises. One of the lessees, a restaurant, discriminated on the basis of race.

In holding state action and conduct violative of the Equal Protection Clause of the Fourteenth Amendment, the Court concluded that:

"The action inhibited by the equal protection clause of the Fourteenth Amendment is only such action as may fairly be said to be that of the states, but is state

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action of every kind, including state participation through any arrangement, management, funds, or property; the Amendment erects no shield against merely private conduct, however discriminatory or wrongful, unless to some significant extent the state in any of its manifestations becomes involved in it."

As you have described it, the analogous fact situation exists here. Therefore, the city may not, through the vehicle of industrial revenue bonds, finance and lease a recreational facility to a private country club which bases the use and enjoyment of that facility upon race or some other impermissible classification.

If I may be of any further assistance to you, please feel free to contact me.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:HW:ksn