



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 21, 1975

Opinion No. 75-172

Mr. W. Edward Nichols, Esq.
DEAN, DEAN, NICHOLS & SPRAGUE
400 Columbian Building
Topeka, Kansas 66603

RE: K.S.A. 19-2770

Dear Mr. Nichols:

You have requested an opinion from this office relative to the application of K.S.A. 19-2770. You advise that the Jefferson County Board of Commissioners, pursuant to K.S.A. 19-2753, et seq., has organized and incorporated the Lakeside Village Improvement District which has authorized the construction of certain street and water improvements. Further, the district has now authorized the issuance of general obligation bonds of the county to pay for those improvements. The specific question posed is whether the board of county commissioners is obligated to issue these bonds once the district has so authorized their issuance.

K.S.A. 19-2770 provides thus:

"That whenever the board of directors of any improvement district shall under the authority vested in it by this act, cause any public work or improvement to be made, payment for which is to be made by levy of special assessments, it may in its discretion, instead of levying the entire assessment therefor at one time, provide for the payment of the same by installments, and authorize the issuance of general obligation bonds of the county therefor payable in installments of equal amounts each year for such number of years as may be deemed advisable. If such installments are deemed proper by the board of directors they shall cause notice of the method of payment to be inserted in the official

published notice as set out in the next preceding section. Such improvement bonds shall be issued as provided by law, but no bonds shall be issued under this provision until thirty days after the last day of the protect period as set out in the next preceding section; and during said thirty days any person against whose property any special assessment shall have been levied may pay the same in full and thereby discharge his property from the lien thereof." [Emphasis added.]

Initially, the direction of your question pivots upon an interpretation of the phrase "authorize the issuance of general obligation bonds of the county." Some confusion has developed as to the precise import of these words. K.S.A. 19-2770 prior to amendment by chapter 122, Laws of 1974, permitted a district to "issue improvement bonds," which it did unilaterally and without further action on the part of the county. As amended this section now specifies that bonds, although authorized by the district, shall be "general obligation bonds of the county." [Emphasis supplied.] Thus, the question arises whether once the district authorizes such bonds any further action by the board of county commissioners becomes necessary to permit their issuance or whether the board has the discretionary power to refuse to act so as to prevent their issuance. It has been suggested that the legislature, by making the bonds general obligations of the county, intended to transfer the bond issuing authority from the district to the county. We are not so persuaded. The Kansas Supreme Court has long followed the precept set down in Rathbone v. Board of Commissioners of Kiowa County, 73 F. 395, reversed 83 F. 125, 27 C.C.A. 477 (1896), certiorari denied 170 U.S. 705, 42 L.Ed. 1218, 18 S.Ct. 940 (following City of Brenham v. German-American Bank, 144 U.S. 173, 36 L.Ed. 390, 12 S.Ct. 559, and Ashuelot National Bank v. School District No. 7, Valley County, 56 F. 197, 5 C.C.A. 468) wherein the court concluded:

"Whenever the power to issue bonds is called in question, the authority must be clearly shown, and will not be deduced from uncertain references. It can only be conferred by language which leaves no reasonable doubt of an intention to grant it."

See City of Horton v. Robb, 173 Kan. 398, 246 P.2d 253 (1952); School District No. 6, Chase County v. Robb, 150 Kan. 402, 93 P.2d 905, 124 A.L.R. 879 (1939); and, Kaw Valley Drainage District of Wyandotte County v. Kansas City, 119 Kan. 368, 239 P. 760 (1925). K.S.A. 19-2770 specifically grants discretionary power to the board of directors of the improvement district to authorize the issuance of general obligation bonds. See also K.S.A. 19-2765, Eighth. Neither this statute nor any other pertinent statutory provisions contain specific or clearly implied

grants of authority to the county to issue bonds for improvement district projects. The suggested interpretation falls fatally short of the Court's sine qua non. Accordingly, we must conclude that counties are not authorized to issue general obligation bonds for improvement districts under K.S.A. 19-2770.

If, then, the county is without authority to issue these general obligation bonds, the question necessarily evolves to whether the improvement district remains empowered under K.S.A. 19-2770 to issue county general obligation bonds even though the district thereby incurs an indebtedness of the county. (The debt may be qualified to the extent that K.S.A. 19-2771 requires a recital stating that such bonds are ". . . payable from special assessments that have been levied and constitute a lien upon real estate in said district benefited by improvements made under the provisions of [K.S.A. 19-2753, et seq.] . . ."). It is fundamental that authority to issue municipal bonds is vested in the legislature, and adjunct to such authority is the power to delegate it. In Board of County Commissioners of Seward County, Kansas v. Aetna Life Insurance Co., 90 F. 222, 32 C.C.A. 585 (8th Cir. 1899), the court concluded thus:

"The power to borrow money, to incur indebtedness, to make contracts and to issue bonds on behalf of any political subdivision thereof, are all essentially legislative powers, which it is the providence of the legislature to exercise itself, or to delegate to municipal or quasi-municipal corporations, to be exercised free from every restriction not expressly imposed by the constitution of the state or the inalienable rights of man."

Without question, the legislature intended through K.S.A. 19-2770 to delegate the power to issue bonds to the improvement district. But, it is important to note that it is clearly a contingent delegation of power. Not until the board of county commissioners pursuant to K.S.A. 19-2753 has incorporated and organized the improvement district does bond issuing authority, as, of course, all the district's powers, become operative. In other words, once the board of county commissioners creates the district, the district then becomes vested by operation of law with the authority to issue general obligation bonds of the county. Thus, employing the traditional guidelines governing the delegation of bond issuing power, supra, we conclude that K.S.A. 19-2770, as well as K.S.A. 19-2753, Eighth, does not violate any constitutional prohibition, and that these sections lawfully empower an improvement district to issue general obligation bonds of the county for payment of district sewer and street improvements.

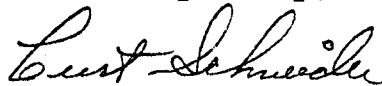
We further note legislative history appurtenant to chapter 122, Laws of 1974. From inception, the act (chapter 180, Laws 1945) has granted the district alone power to issue improvement bonds for payment of the

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cost of constructing public works and improvements of the district. And, it has come to our attention that the legislature's primary motive for amending the act was to enhance the marketability of such bonds by granting them the status of general obligations of the county. It was not contemplated or intended by qualifying the bonds as obligations of the county that the authority for their issuance should transfer from the district to the county.

Accordingly, it is the opinion of this office that Lakeside Village Improvement District pursuant to K.S.A. 19-2770 may properly issue general obligation bonds of Jefferson County for payment of street and water improvements constructed pursuant to K.S.A. 19-2753, et seq.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/JPS/ksn

cc: Mr. Gary Nafziger
Jefferson County Attorney