



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER  
Attorney General

June 26, 1975

Opinion No. 75-258

Mr. Donald E. Martin  
City Attorney of Kansas City  
Ninth Floor - Municipal Office Building  
One Civic Center Plaza  
Kansas City, Kansas 66101

Dear Mr. Martin:

Prior to amendment by 1975 Senate Bill 570, K.S.A. 13-1253 provided in pertinent part thus:

"Any municipality, having a population of more than one hundred twenty thousand and owning and operating a water and light plant, or operating such plants through a board of public utilities as provided by law, authorized by the laws of the state of Kansas to issue general obligation bonds for the reconstruction, alteration, repair, improvement, extension, or enlargement of any of the utilities mentioned herein is hereby empowered to issue and sell revenue bonds in payment of the costs thereof. . . ."

Although K.S.A. 13-1253 constitutes a grant of power and authority which is permissive on its face, the exercise of that authority to issue revenue bonds may be compelled by the board of public utilities under K.S.A. 13-1260, which provides in pertinent part thus:

"In municipalities of the class provided for herein, if the water and light plants thereof are under the control and management of a board of public utilities as provided by law, *when three-fifths of said board of public utilities shall*

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*deem it necessary and expedient that revenue bonds be issued for any of the purposes provided for herein, it shall be the duty of the governing body . . . to take the necessary steps for the issuance of such revenue bonds . . . ."*  
[Emphasis supplied.]

Thus, under the law prior to the 1975 amendment, the governing body of the city is vested with authority for and entire discretion regarding the issuance of revenue bonds under K.S.A. 12-1353, except insofar as the exercise of that authority may be compelled by a determination by three-fifths of the board of public utilities that it is "necessary and expedient" that revenue bonds be issued for any of the purposes authorized by law, whereupon the governing body of the city must within ten days commence the necessary steps for the issuance of such bonds.

Senate Bill 570 confers additional authority on the governing body of the city, dealing specifically with "refunding revenue bonds." It provides in pertinent part thus:

"Any municipality which has issued or may hereafter issue revenue bonds under the provisions of this section may at any time deemed advisable issue and sell refunding revenue bonds to refund any previous issue or issues or part thereof which are outstanding either at or prior to their maturity. Such refunding revenue bonds may be sold in such manner and upon such conditions as the governing body determines by ordinance to be in the best interests of the municipality, including but not limited to all details relating to the maturity of the bonds, disposition of income from fees, charges, interest earned on the investment of bond proceeds and escrow accounts . . . ."

The question is presented whether the exercise of authority vested in the city governing body regarding the issuance of refunding revenue bonds under K.S.A. 13-1253 as amended may

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be compelled by a three-fifths vote of the board of public utilities under K.S.A. 13-1260. The bill provides that the "municipality," which under K.S.A. 13-1252 is the governing body of the city and not the board of public utilities, which has heretofore issued or may hereafter issue revenue bonds under K.S.A. 13-1253, whether or not at the instance of a three-fifths vote of the board under K.S.A. 13-1260, "may at any time deemed advisable" issue refunding revenue bonds for all or any part of any previous issue or issues. One may ask, deemed advisable by whom. The determination of advisability must be made by any body statutorily empowered to do so. The, issuing authority being vested in the city governing body, the power to determine the advisability of such issues must rest there likewise, unless it is plainly and expressly vested in some other body. Nothing in Senate Bill 570 provides any express authority to the board of public utilities to make that determination. Moreover, no language in the bill suggests that such authority in the board is reasonably or necessarily to be implied. Indeed, the bill provides that the refunding revenue bonds may be sold only "in such manner and upon such conditions" as the city "governing body determines by ordinance to be in the best interests of the municipality." Necessarily, the legislative determinations to be made by ordinance adopted by the city commission respecting the "best interests of the municipality" may not be compelled by any vote of the board of public utilities, whether a majority vote or a three-fifths vote. There is no warrant under Senate Bill 570 to infer in the board of public utilities any voice in the issuance of refunding revenue bonds, either directly or by reference to its existing authority under K.S.A. 13-1260.

In addition, revenue bonds and refunding revenue bonds are issued for different purposes. Revenue bonds authorized under K.S.A. 13-1253 may be issued to pay the cost of "reconstruction, alteration, repair, improvement, extension or enlargement" of the utility, and under K.S.A. 13-1260, a three-fifths vote of the board of public utilities may compel the issuance of revenue bonds "for any of the purposes provided herein," a reference clearly to the purposes for which revenue bonds may be issued under K.S.A. 13-1253 as originally enacted. Refunding revenue bonds may be issued not to meet enlargement and expansion costs, but only "to refund any previous issue" of revenue bonds. K.S.A. 13-1253 as amended clearly distinguishes between revenue bonds and the purposes for which they may be issued, and refunding revenue bonds and their purpose. The board of public utilities

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under K.S.A. 13-1260 may compel the issuance only of revenue bonds for the purposes for which such bonds are authorized to be issued, and does not extend to the newly-authorized refunding revenue bonds, proceeds from which may be used only to refund previous revenue bond issues.

K.S.A. 13-1253 and -1260 were enacted, of course, at the same time, and in the same enactment. The only revenue bonds which the board could require to be issued by a three-fifths vote under the latter statute were those authorized under the former statute. The amendment to the former statute provides additional and independent authority for the city governing body to issue refunding revenue bonds. As indicated above, K.S.A. 13-1260 was not, at the same time amended to include refunding revenue bonds among those revenue bonds which the board of public utilities may require to be issued by a three-fifths vote. Under K.S.A. 13-1253 as amended by Senate Bill 570, the issuance of refunding revenue bonds shall be "in such manner and upon such conditions as the governing body determines by ordinance," an exercise of legislative authority vested in the city governing body which may not be compelled by any other body, including the board of public utilities. The city governing body is necessarily by law the sole body entitled to when and if such issues shall serve "the best interests of the municipality." Accordingly, for the reasons stated above, it is our opinion that the exercise of authority vested in the city governing body regarding the issuance of refunding revenue bonds under K.S.A. 13-1253 as amended by Senate Bill 570 is not subject to any authority of the board of public utilities under K.S.A. 13-1260.

Secondly, you inquire concerning K.S.A. 13-1271, which provides in pertinent part thus:

"In the cities herein designated, . . . the governing bodies of the cities shall, at the beginning of each fiscal year, set over to the funds to be used for governmental functions of such cities, *not less than three percent nor more than twenty percent of the gross operating revenue of their public utilities hereinbefore designated* [electric-light plant and municipal water plant], for the year immediately prior to the preceding fiscal year: Provided, That where the utilities of the cities are managed, operated and controlled by a board of public utilities or other managing boards, then these boards shall set over the funds to be used for governmental functions." [Emphasis supplied.]

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The question is raised whether the payment required under this section may be computed separately for the water department and the electric department because of K.S.A. 13-1227 and -1228. These two statutes appear entirely unrelated to the computation of the amount required to be set over under K.S.A. 13-1271. K.S.A. 13-1227 and -1228 merely require that rates for water and electricity, respectively, be fixed in such amounts as will secure an income sufficient to cover all costs, expenses, charges and indebtedness enumerated therein. Although water and electric rates must be fixed separately, the annual payment required under K.S.A. 13-1271 must be based on the "gross operating revenues" from all utility services provided by the board. The statutory requirements that water and electricity rates be determined separately does not in our opinion justify computation of the payment due under K.S.A. 13-1271 upon other than the gross operating revenues from all services considered together and jointly.

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

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

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