



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 30, 1975

Opinion No. 75- 274

Mr. Richard Ebersole
City Attorney of Belle Plaine
104 South First
Mulvane, Kansas 67110

Dear Mr. Ebersole:

As city attorney for the City of Belle Plaine, you inquire, first, whether industrial development funds may be used to build recreational facilities, in this instance, tennis courts.

K.S.A. 13-1441 commences thus:

"Incorporated cities are hereby authorized to levy annually upon all the taxable tangible property within said city a tax not be exceed one (1) mill for the purpose of creating a fund to be used for securing industries or manufacturing institutions for such city or near its environs. . . ."

K.S.A. 13-1442 specifies the use and disposition of such monies:

"That all moneys collected by virtue of the tax hereinbefore authorized shall be replaced [placed] in the fund known as an 'industrial fund,' and shall only be used by ordinance duly adopted by the governing body of such city for the purpose of inducing industries to locate within the said city or near its environs. . . ."

Mr. Richard Ebersole

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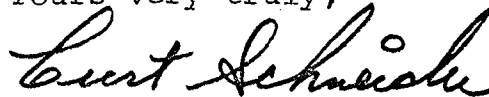
June 30, 1975

I enclose a copy of Opinion No. 73-421, the most recent opinion from this office dealing with these statutes, and an earlier opinion, issued under date of March 23, 1971, to Mr. Bruce Borders, City Attorney for Independence, Kansas.

As these opinions indicate, the "industrial fund" created pursuant to K.S.A. 13-1441 is not a general contingency fund which may be used to finance a broad range of municipal capital improvements which are sought to be justified on the ground that such improvements may incidentally constitute a community asset which may be a "talking point" in efforts to persuade industries to locate in the community. The "industrial fund" is not authorized to be used for public recreational facilities, in our judgment.

Secondly, you indicate some concern has arisen concerning authorized emergency vehicle equipment. A designated authorized emergency vehicle is operated by a volunteer fireman, who has placed two flashing red lights on top of the car as many police cars in the area are equipped. There have been no complaints or misuse of the equipment in any way. However, you express some concern regarding possible abuse in the future, and whether it is mandatory that all authorized emergency vehicles have such equipment. K.S.A. 1974 Supp. 8-1720, as amended by section 21 of 1975 Senate Bill No. 181 makes the specified equipment therein mandatory. The rules governing the operation of authorized emergency vehicles are fairly well prescribed by statute, and if closely adhered to, use of the vehicle should pose no questions of abuse.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosures



STATE OF KANSAS

Office of the Attorney General

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

March 23, 1971

Mr. Bruce E. Borders
Attorney for the City of Independence
P. O. Box 908
Independence, Kansas 67301

Dear Mr. Borders:

You inquire whether the City of Independence may contribute money from its industrial fund, established under K.S.A. 13-1441 and 13-1442, to the Independence Community Jr. College for the completion of a theater within the Fine Arts Building on its campus. In our opinion the city may not do so.

Under K.S.A. 13-1441, the tax which sustains the industrial fund is to be "for the purpose of creating a fund to be used in securing industries or manufacturing institutions for such city or near its environs. . . ." Likewise, under K.S.A. 13-1442, the industrial fund "shall only be used by ordinance. . . for the purpose of inducing industries to locate within the said city or near its environs. . . ."

As you suggest, the project may very well benefit the entire community, and may tend to make the city more attractive to industries. The same may be said of innumerable other civic projects. However, the direct and immediate purpose of the proposed expenditure would be that of constructing the theater itself. Whether the expenditure would ever induce any manufacturing or other industrial operation to locate in Independence is only conjectural. Industry attraction, in our opinion, is but a collateral and highly speculative result of the proposed expenditure, and in our opinion the city may not contribute money from the industrial fund for the completion of the theater.

Yours very truly,

VERN REIDER
Attorney General



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

December 28, 1973

Opinion No. 73- 421

Steven W. Rogers
Fredonia City Attorney
Fredonia, Kansas 66736

Dear Mr. Rogers:

You advise that the City of Fredonia has been requested to purchase an electrical transformer, in order to provide additional power necessary to permit the installation of soybean processing facilities by Archer Daniels Midland. The proposed installation may involve an investment of \$4.5 million, the amount of industrial revenue bonds which the City has been requested to issue. The expanded power capabilities provided by the transformer, estimated to cost approximately \$6,500, are necessary to furnish adequate power to the installation.

The fund is to be used solely "for the purpose of inducing industries to locate within the said city or its environs . . ." The fund was not created as a capital improvement fund, but rather as a fund to support efforts to attract industry. The precise question presented here is whether an expenditure for a capital improvement or addition to a municipal utility which is necessitated by a proposed industrial installation is a proper expenditure from a fund created for the purpose of inducing industry to locate in the city. Technically, the industry may be said to already have been attracted to the city, for it has requested the issuance of approximately four and one-half million dollars in industrial revenue bonds. The improvement of municipal services and city utility facilities necessary to service the proposed industry is not, we must conclude, a proper expenditure from a fund which is designed primarily to attract industry in the first instance. The fund was not created as a general contingency fund from which the city may finance any project or municipal service which is necessitated by the decision, final or tentative, of an industrial concern to locate in the city, and that appears to be the nature of the proposed expenditure for an electrical transformer.

Steven W. Rogers
December 28, 1973
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For these reasons, we cannot but conclude that the purpose of the expenditure is not one permitted under the terms of K.S.A. 13-1441.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm