



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

October 29, 1975

ATTORNEY GENERAL OPINION NO. 75- 410

Mr. Stephen P. Chinn
Assistant City Attorney
Legal Department of Kansas City
Ninth Floor - Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: Cities--Bonds--General

Synopsis: Under K.S.A. 12-1740 *et seq.*, a city may issue industrial revenue bonds for construction of a highrise residential facility.

* * *

Dear Mr. Chinn:

You inquire whether construction of a highrise residential facility is within the authority provided for the issuance of industrial revenue bonds under K.S.A. 12-1740 *et seq.* In my opinion it is. I enclose a copy of an opinion dated September 11, 1964, issued by Attorney General William Ferguson to Mr. Charles D. Stough, concluding that construction of an apartment facility was within the language of the act. I concur in that opinion, and its application to the question you pose.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure



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September 11, 1964

Mr. Charles D. Stough
Attorney at Law
Jayhawker Building
Lawrence, Kansas

Dear Mr. Stough:

You have inquired of this office with respect to our interpretation of the provisions of G.S. 1961 Supp., 12-1740 et seq., commonly called the Industrial Revenue Bond Act. Specifically, you inquire as to:

(1) Would the construction of an apartment house by the City of Lawrence, to be leased to a tenant for the purpose of renting units therein to students at the University of Kansas, fall within any of the enumerated purposes of the act, and (2) Does the act give cities the right of eminent domain to acquire a site for buildings for the purposes contemplated by the act?

With respect to Question No. (1), it would be our opinion that the operation of an apartment house would properly be classified as a commercial endeavor. This office previously had the occasion to determine whether a care home for the aged, operated as a private business for profit, was a commercial establishment. We are enclosing a copy of our letter to Hon. William C. Farmer, dated October 7, 1963, in this regard. You will notice that it was the opinion of this office that the announced legislative declaration of purpose contained in the Industrial Revenue Bond Act would not allow us to apply the strict and narrow meaning of the term "commercial", as such term is used in the act. We also pointed out that the broader meaning of such term would now seem to embrace all

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activities designed to produce a profit. It would therefore be our opinion that the reasoning followed in our letter to Senator Farmer relating to homes for the aged would apply also to apartment houses run for a profit, and that the construction of an apartment house would come within the enumerated purposes of the act.

With respect to Question No. (2), we are enclosing a copy of our Opinion No. 63-30 in which we held that a city does have the right to acquire a site by eminent domain for the purposes set forth in the Industrial Revenue Bond Act. G.S. 1949, 26-201, cited in such opinion, has of course been repealed by the enactment of Laws 1963, Ch. 234. We call your attention to Section 71 and Sections 1 to 16, inclusive, of such chapter, however.

We trust the foregoing adequately answers your questions.

Very truly yours,

WILLIAM M. FERGUSON
Attorney General

ORS:ja