



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

January 26, 1976

ATTORNEY GENERAL OPINION NO. 76- 30

Donald A. Bell
of CURFMAN, BRAINERD, HARRIS,
BELL, WEIGAND & DEPEW
Suite 830 First National Bank Bldg.
Wichita, Kansas 67202

Re: Counties--Park and Recreation--Bonds

Synopsis: K.S.A. 19-2820 authorizes the issuance of general obligations upon the passage of a resolution declaring the intent of the board of county commissioners to acquire title to land for park and recreational purposes. It may be amended by charter ordinance to authorize a resolution declaring the intent of the board of county commissioners to devote land to park and recreational purposes, title to which has previously been acquired.

* * *

Dear Mr. Bell:

On behalf of Mr. Turner, Sedgwick County Counselor, you inquire concerning the authority of the county to dedicate certain lands which were previously acquired for park and recreational use.

You advise that some time ago, the county acquired 240 acres of land, less right-of-way for Interstate Highway 35, in northern Sedgwick County. The land was purchased with general county funds. Under date of May 1, 1974, the county issued approximately \$3 million in general obligation bonds to construct and equip a County Coliseum Building on the site. That building is not in the process of construction. No proceeds from that bond sale

Donald A. Bell
Page Two
January 26, 1976

were used in the purchase of the site itself. The county now desires to develop the site as park and recreational grounds.

K.S.A. 19-2819, applicable to Sedgwick County, provides in pertinent part thus:

"The board of county commissioners . . . may establish parks and recreational grounds within such county, may purchase or acquire title to necessary lands and property by donation, devise, bequest or condemnation proceedings for the purpose of establishing a park and recreational grounds in such county."

It is proposed to designate all or a part of the 240 acres mentioned above as county park and recreational grounds and thereafter to adopt a plan for the improvement of these lands as set out in K.S.A. 19-2820, which commences thus:

"The board of county commissioners . . . upon the acquisition of lands for park and recreational grounds or entering into agreement for the purchase thereof, is empowered to adopt a plan for the improvement of same, including a lake or lakes, recreational facilities, reforestation, roads and roadways, and such other improvements as may be conducive to the recreation, convenience and comfort of the public"

The contemplated improvements would include one or more lakes, roads and roadways, and various recreational facilities, including picnic grounds and camping area including travel trailer parking.

You advise that the lands were not dedicated at the time of acquisition to a specific use, including park and recreational uses. It is proposed to effect that dedication by adoption of an appropriate resolution of intent and subsequent designation of the area for park and recreational use, in satisfaction of the procedure required by K.S.A. 19-2823, and to authorize the issuance of bonds of the county thereunder if no sufficient protest is filed.

Donald A. Bell
Page Three
January 26, 1976

K.S.A. 19-2823 authorizes the issuance of bonds for the purposes of the act, K.S.A. 19-2819 et seq., and elaborates the procedure for doing so thus:

"For the purpose of carrying out the provisions of this act, the board of county commissioners may issue and sell bonds of such county . . . and such bonds may be issued and sold without the necessity of an election unless a petition in opposition to the issuance of such bonds without an election signed by not less than twenty percent (20%) of the qualified electors in any such county shall be filed with the county clerk of the county within thirty (30) days following the passage of a resolution by the board of county commissioners declaring their intention to acquire title to lands for the purposes of park and recreational grounds . . .".
[Emphasis added.]

The bond-authorizing process is initiated, thus, by the passage of a resolution by the board "declaring their intention to acquire title to lands for the purposes of park and recreational grounds." In this instance, the county has already acquired title to the land, although not specifically for park and recreational use. The question is presented whether the resolution requirement is satisfied by a resolution declaring an intention to dedicate the previously acquired property to park and recreation purposes.

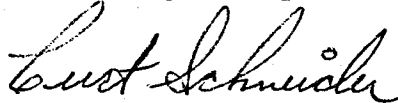
The purpose of the resolution, of course, is to specify the proposed land acquisition and park improvement, the proposed financing of which by general obligation bonds of the county may be submitted to the electorate upon the filing of a sufficient protest. The bond proceeds are not restricted to property acquisition alone, of course, and may also be used for park improvements upon the acquired property. The statute contemplates that the voters shall have an opportunity to vote upon the financing of park and recreational improvements upon land which the county proposes to acquire for that purpose. Certainly, the right of the electorate to vote upon the question is not affected in any way if the land upon which the improvements are proposed to be made is already acquired, for the right of the people to approve or disapprove general obligation bonds affecting their

Donald A. Bell
Page Four
January 26, 1976

tax liability remains unimpaired. Nonetheless, the county has already acquired title to the property. A resolution declaring an intention to dedicate certain property already held in fee by the county to park and recreational use is not precisely the legal equivalent of a resolution declaring an intention "to acquire title to lands for the purposes of park and recreational grounds." There exists little ambiguity in the statutory language specifying the nature of the resolution required by law to initiate the bond authorization process. The resolution which has been proposed, as described above, is functionally equivalent, for all practical purposes. However, it is not legally identical, and the use of this enactment to finance improvements upon previously acquired land is not squarely within its terms.

However, the act is not applicable uniformly to all counties. It involves matters of local legislation and administration, and inasmuch as it is not applicable uniformly to all counties, the board of county commissioners, by adoption of an appropriate charter resolution, may exempt themselves from the statutory restriction regarding the required resolution, and provide in lieu thereof for passage of a resolution declaring an intention to devote the described lands title to which have been acquired to park and recreational purposes, and thus adapt this 1935 enactment to the needs of the county in 1976.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:HTW:bv