



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 27, 1976

ATTORNEY GENERAL OPINION NO. 76-303

Mr. Marion P. Mathews
City Attorney for Burden
First National Bank Building
Post Office Box 731
Winfield, Kansas 67156

Re: Cities--Bonds--Sewers

Synopsis: A city may issue general obligation bonds for the construction of sewers. Action by the city governing body to annex property or to issue bonds for construction of sewers on such annexed property is not invalidated by the fact, in and of itself, that two members of the council voting on such action are related by blood or marriage to one or more owners of such annexed property. The description of land contained in the ordinance of annexation is the legal description of all land annexed by such ordinance. Bonds may be recalled or redeemed only as provided by the terms of the bonds or the statutes authorizing the same.

* * *

Dear Mr. Mathews:

As City Attorney for the City of Burden, you inquire concerning certain general obligation bonds issued by the city. You advise that approximately three years ago, the City of Burden installed a sewage disposal system for the entire city. The project was financed by the issuance of general obligation bonds. During the winter of 1976, the city annexed a parcel of property upon petition of the landowners, pursuant to K.S.A. 12-520(g). The

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owners of the annexed property intended to develop the property, and requested the city to extend the sewer mains to include the newly annexed property. The city then issued additional general obligation bonds in the amount of \$60,000, dated March 1, 1976. Bonds 26 through 60 are callable after March 1, 1977, providing accrued interest and a penalty of two percent is paid. No provision was made for recalling bonds 1 through 25. These bonds have been sold, but no construction work has been begun, and none of the proceeds have been used. Recently, the city council was presented with a petition signed by 131 persons, requesting the governing body to call and redeem the bonds of the \$60,000 issue.

You inquire, first, whether a city of the third class may lawfully issue general obligation bonds for the construction of a sewer in an area annexed to the city, under the facts set forth above. The bonds in question were issued pursuant to K.S.A. 12-617 *et seq.* We have reviewed the transcript of the bonds in question, and must conclude that the issuance of general obligation for the construction of sewers in the annexed portion of the city is within its authority. We find no statutory objection or impediment to the issuance of such bonds for installation of sewers in this area of the city. The statutory authority of the city is not affected by the location of the sewers to be financed thereby.

Secondly, you ask whether the fact that two members of the council who voted on the annexation and the bond issue are relatives of owners of the annexed land affected the validity of either the annexation or the bond issue. One member, you advise, is a son of a property owner of the land in question, and another may be a brother-in-law. From the facts you state, it appears that neither of the two council members described above had any personal financial or monetary interest in the property annexed. Moreover, even if a member of the council owned property proposed to be annexed, I know of no basis upon which that member may be disqualified from voting either for or against the annexation of that property as a member of the city governing body. The mere existence of a familiar relationship, either by blood or marriage, does not in and of itself, support a legal judgment that such officers were motivated by personal advantage, pecuniary or otherwise, and acted otherwise than in accordance with their public duty in voting on the question of annexation or the issuance of the bonds in question.

1. City of Burden, General Obligation Sewer Improvement Bonds, Series A, 1976; Principal Amount \$60,000; dated March 1, 1976.

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Thirdly, you ask whether an error in the description of the annexed real property, contained in the adopted ordinance of annexation, may be corrected by an ordinance properly describing the property. The property which was annexed is necessarily only that which is described in the ordinance. The nature of the error in the description is not clear from your letter, so we lack sufficient information to address the question more fully. It is sufficient to say, however, that the ordinance which was in fact passed describes the property which is now a part of its corporate territory. If, for example, the error is such that property was annexed which is not legally subject to annexation, the ordinance may well be void or voidable. If, on the other hand, the error is such that the ordinance merely describes more land than was intended to be annexed, and such additional land is itself lawfully subject to annexation, it may well be that the ordinance is not subject to attack, and that all property described in the ordinance is now a lawful part of the corporate territory of the city.

Your final question inquires whether a municipality may lawfully recall the above referenced general obligation bonds under the General Bond Law, specifically K.S.A. 10-1006, providing the face value (principal amount) plus accrued interest and a two percent penalty is paid the bondholder.

We note that the enabling legislation authorizing the general obligation bonds in question (*i.e.* K.S.A. 12-617 *et seq.*) do not provide for call prior to maturity. An examination of the bonds themselves does not reveal an early redemption for bonds one through 25; it does however permit early call of bonds 26 through 60 after March 1, 1977, providing that accrued interest and a two percent penalty is paid each bondholder as we pointed out above.

It can be stated that as a general rule the right of a municipality to redeem its general obligation bonds prior to their maturity is governed by the terms of the bonds, and in the absence of a provision therefor either in the bonds or statutes, authorizing the same, bonds issued for a certain number of years are not redeemable before maturity without the consent of the bondholder.²

2. This, of course, does not preclude such redemption where the authorizing statutes or the bonds themselves provide for early redemption. *City of Miami v. State*, 139 Fla. 598, 190 So. 774 (1939); *State ex rel. City of Columbus v. Price*, 127 Neb. 132; 354 N.W. 889 (1934). See generally, 64 C.J.S., *Municipal Corporations*, § 1959; Annotation, 109 A.L.R. 988.

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In *State ex rel. v. School Fund Commission*, 152 Kan. 427, 103 P.2d 801 (1940) Justice Harvey stated:

"It is well settled that in the absence of a provision therefor, either in the bonds or an applicable statute, municipal bonds issued for a certain number of years are not redeemable before maturity without the consent of the persons holding them."

As we pointed out earlier, neither the statutes, authorizing ordinance nor the instruments themselves permit redemption of bonds numbered one through 25 prior to their stated maturity date. So applying the general rule as stated, *supra*, these bonds may not be redeemed unless the city has the consent of the bondholders. This brings us to the provisions of K.S.A. 10-1006, which provides thusly:

"Whenever any county, city, township or school district in this state shall owe any outstanding and unmatured bonds, and at the same time shall have in its treasury any sinking funds raised to pay such bonds, the proper officers of such county, city, township or school district may use such funds to purchase or pay any of such bonds and cancel the same, *whenever they can be so purchased or paid at or below par, or at such reasonable price above par as may be requested by a majority of the resident taxpayers of such county, city, township or school district, and which request may be made by a written petition to that effect, directed to such officers.*" [Emphasis supplied.]

As is apparent, this statute enables the municipality to use the available monies of a sinking fund established for the retirement of a particular bond issue to purchase outstanding and unmatured bonds of that issue. However, an important qualification pivots on the language "whenever they can be so purchased or paid." This in our judgment means that unless the terms of the bonds or authorizing statutes provide for an early redemption or the bondholders give their permission to an early redemption the bonds cannot "be so purchased or paid."

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Accordingly, we are constrained to conclude that the general obligation bonds numbered one through 25 issued by the City of Burden on March 1, 1976, cannot be redeemed prior to their stated maturity date unless the city first secures the permission for such early redemption from each bondholder of said bonds.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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