



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 12, 1976

ATTORNEY GENERAL OPINION NO. 76- 320

The Honorable Jim Parrish  
State Senator  
Legal Counsel, Metropolitan Topeka  
Airport Authority  
909 Topeka Avenue  
Topeka, Kansas 66612

Re: Cities--Airport Authorities--Powers

Synopsis: The Metropolitan Topeka Airport Authority constitutes a separate legal entity capable of accepting Cullen Village property from the City of Topeka and assuming custody and control thereof. The Authority is a political subdivision which has the power to levy taxes and therefore constitutes a "municipality" under the Cash Basis Law. However, any indebtedness created by the purchase of Cullen Village would be exempt from the Cash Basis Law under K.S.A. 10-1116(a)(4) as long as the Authority provides a revolving fund for the operation of a municipal airport out of which such indebtedness is paid.

\* \* \*

Dear Senator Parrish:

As counsel for the Metropolitan Topeka Airport Authority, you inquire concerning the powers of the Authority regarding possible acquisition and operation of Cullen Village. You advise that the City of Topeka has passed resolution no. 3058, on August 31, 1976, directing its negotiating team to offer the sum of \$6,725,000 for purchase of the Cullen Village housing complex from the United States government. One of the terms of the offer is that the city would execute a purchase money mortgage in the entire amount of the purchase price.

The Honorable Jim Parrish  
Page Two  
October 12, 1976

You advise that the MTAA is being considered as an entity to acquire and manage the property, which could serve as an additional source of revenue for the maintenance and operation of other operations under jurisdiction of the Authority, including Philip Billard Municipal Airport, Forbes Field Airport, and the Topeka Air Industrial Park. Thus, you inquire whether the MTAA is a separate political subdivision either of the City of Topeka or of the State of Kansas, which is legally empowered to acquire, manage and dispose of Cullen Village Property, and if so, whether the Authority could execute a mortgage therefor without violating the cash-basis law, K.S.A. 10-1101 *et seq.*

You enclose a copy of Charter Ordinance No. 26 of the City of Topeka, which exempts the city from K.S.A. 1972 Supp. 27-315 through 27-326, inclusive and provides substitute and additional provisions relating to the same subject. The cited statutory provisions constitute the Surplus Property and Public Airport Authority Act, K.S.A. 27-315 *et seq.*, adopted by the legislature in 1965, to provide a legal entity with broad and comprehensive powers to deal with the manifold problems relating to the use of surplus public property, in particular, real property. K.S.A. 27-316 sets forth a helpful and pertinent statement of legislative policy and purpose thus:

"It is hereby declared to be the policy of the state that to promote the public interest, economy, health, safety, education and general welfare of the cities to which the provisions of this act may be applicable and of the residents and property owners therein that the people be empowered to acquire, own, maintain, operate, improve and dispose of surplus real or personal properties of the United States, the state of Kansas, any political subdivision thereof or any municipality therein, within or without the cities to which the provisions of this act may be applicable, including, but not limited to, property which may be essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport. Because of the unique problems which exist relative thereto, the creation of an authority separate and distinct from such cities and the counties in which such cities are located is necessary."

Although the City of Topeka exempted itself from the provisions of this act, including this section, the charter ordinance which was

adopted as modelled closely after the act, and this statement of purpose remains pertinent to its construction.

The powers which are granted to the Authority by section 3 of the ordinance are similar to the powers of the statutory authority described in K.S.A. 27-319, with four principal exceptions. The following subparagraphs of the section state thus:

"(c) To receive, lease, obtain option upon, acquire by contract or grant, or otherwise acquire; to hold, maintain, operate, improve, subdivide, lease, lease for oil and gas purposes and develop property; *said property to be titled in the name of the 'City of Topeka, Kansas, a municipal corporation.'*

\* \* \*

(f) To acquire, hold and dispose of property without regard to the provisions of any other laws governing the acquisition, holding and disposition of public property and public funds by cities and their agencies *subject to approval of the City.*

\* \* \*

(i) To borrow money and pledge, mortgage or otherwise hypothecate property and revenues as security therefor; *subject to the approval of the City;*

\* \* \*

(j) To contract with the United States or any of its agencies, the State of Kansas, any political subdivision thereof and any municipality therein with respect to the terms on which the authority may agree to purchase or receive property, including, but not limited to, provisions for the purchase of property over a period of years, for payment of the purchase price or installments thereof in the manner and to the extent required, and for pledge of all revenues and income received from the sale or operation of said property after providing for administration, maintenance and operation costs,

to payment of the principal of the purchase price and interest thereon or of any bond issued by the Authority issued *subject to the approval of the City.*"  
[Emphasis supplied.]

In each instance, the charter ordinance requires that the Authority seek approval of the city prior to the exercise of the powers above, whereas no such approval is required in the statutory provisions. In two other respects, the authority created by the ordinance must seek approval of the city, prior to the issuance of industrial revenue bonds and prior to exercise of the power of eminent domain. Such approval is not required by the act itself. In addition, in section 3(c), the ordinance omits the words "purchase," "to own," "to sell, convey, lease, exchange, transfer, assign, grant option with respect to, mortgage or otherwise dispose of property." Thus, while the Authority created by the ordinance may not exercise these particular powers, it may still "receive, lease, obtain option upon, acquire by contract or grant, or otherwise acquire," property, and it may "hold, maintain, operate, improve, subdivide, lease, lease for oil and gas purposes and develop" property. Section 3(c). In addition, it may dispose of (§ 3(f)) and mortgage (§ 3(i)) property, all with the consent of the city. Otherwise, the powers of the MTAA are substantially identical to those of the statutory Authority.

These differences have prompted some controversy regarding the precise legal status of the Authority, *i.e.*, whether it is a political subdivision of the State of Kansas separate and independent from the city, or whether it is a mere agency of the city which acts only at its sufferance. Neither extreme is fairly descriptive. The Authority is created a "separate political subdivision of the City of Topeka," with the power to sue and be sued, to enter into contracts, and to appoint and employ its own officers, agents, counsel and employees. It may issue its own bonds, including general obligation, revenue and industrial bonds, as well as no-fund warrants. General obligation bonds of the Authority represent an indebtedness of the Authority, not of the city. Section 8(a). Further, bonds, warrants and other obligations and liabilities of the Authority do not represent obligations of the city or the state, but of the Authority itself. Section 8(e).

Created by charter ordinance, the MTAA is a creature of the city. At the same time, it is not merely an administrative arm of the city. It is a separate legal entity which may exercise certain of its powers freely and without approval from the city. In framing the ordinance, the city obviously wished to retain approval of property transactions of the Authority, and for this purpose

The Honorable Jim Parrish  
Page Five  
October 12, 1976

provided that property acquired by the Authority shall be titled in the name of the "City of Topeka, a municipal corporation." However, in virtually every other respect, excepting eminent domain power and the issuance of industrial revenue bonds, the powers of the Authority created by the ordinance are identical to those of the authority contemplated by the statute, as an entity "separate and distinct" from the city. K.S.A. 27-316, *supra*. While the city is entitled to approve the transactions whereby property passes under the custody and control of the Authority, once it has assumed that custody and control, it enjoys complete administrative independence in the management and operation of such property, entirely unlike a city administrative division or agency.

Clearly, the Authority is empowered to acquire, receive and hold any property which the City authorizes to be transferred to it. Thus, in my judgment, the City of Topeka could transfer to, and the Authority is empowered to accept custody and control over any property, including Cullen Village, which the City chose to transfer thus.

The Authority, like the city, is subject to the cash-basis law. K.S.A. 10-1113 provides that it shall be unlawful for the governing body of any municipality to create an indebtedness against the municipality which is "in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose . . . ." K.S.A. 10-1101(a) defines the term "municipality" thus:

"'Municipality' shall be construed and held to mean county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision or taxing district of the state."

The MTAA is a political subdivision which has the power to levy taxes. Its power to levy taxes is subject to the consent of the city. Nonetheless, once that consent is given, the Authority levies taxes on its own behalf, and the city does not levy taxes for it. It is thus a taxing subdivision and a "municipality" within the meaning of the cash-basis law. The cash-basis law excepts certain indebtedness from its provisions. K.S.A. 10-1116 states in pertinent part thus:

"(a) The limits of indebtedness prescribed under the provisions of article 11

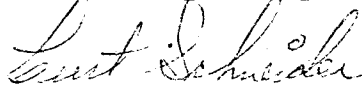
The Honorable Jim Parrish  
Page Six  
October 12, 1976

of chapter 10 of Kansas Statutes Annotated may be exceeded when: . . . (4) provision has been made for a revolving fund for the operation of any municipal airport financed and sustained partially or wholly by fees, rentals, proceeds from the sale of merchandise or charges for rendering services, received from the users of such airport."

If a revolving fund established for the operation of a municipal airport is utilized for the payment of indebtedness of the Authority, thus, such indebtedness would be excepted from the limits of the cash-basis law.

Thus, to recapitulate, in my judgment, the Authority is legally empowered by the terms of Ordinance No. 26 of the City of Topeka, to accept custody and control of Cullen Village should the city choose to transfer it to the Authority, and the Authority in the operation thereof would be subject to the Kansas cash-basis law except as described in the preceding paragraph.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj