



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

March 7, 1977

ATTORNEY GENERAL OPINION NO. 77- 75

Mr. John E. Caton  
Curfman, Brainerd, Harris, Bell,  
Weigand & Depew  
Suite 830 First National Bank Building  
Wichita, Kansas 67202

Re: Cities--Home Rule--Bonded Indebtedness

Synopsis: Under Article 12, § 5 of the Kansas Constitution, a Kansas city need not seek express statutory authority for the issuance of bonds for the financing of municipal undertakings, for that provision vests directly the power to conduct local affairs, including the financing of municipal government and its activities, in the governing bodies of Kansas cities. A Kansas municipality may lawfully acquire property, wherever located, including in another state, for the purpose of using said property in connection with a local municipal enterprise, including the operation of a municipal electrical utility, and the city may finance such an acquisition by the issuance of revenue bonds in the direct exercise of its power to conduct its local affairs vested in it by Article 12, § 5, without further statutory authorization or implementation of that authority. The amount of any bonds so issued are subject to any legislative enactment prescribing limits of indebtedness applicable to such city.

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Dear Mr. Caton:

As bond counsel for the City of Kiowa, Kansas, you write concerning Opinion No. 77-44, addressed to Senator Norman E. Gaar, respecting 1977 Senate Bill 79. In that opinion, I concluded that it was within the constitutional powers of self-government vested in the City of Kiowa by Article 12, § 5 of the Kansas Constitution to authorize the issuance of revenue bonds to finance construction of an electrical transmission line from the boundaries of the city to the substation of an Oklahoma-based electric cooperative located in that state, approximately eight miles south of the City of Kiowa, in order to supply the Kiowa electric distribution system.

Article 12, § 5 of the Kansas Constitution states in pertinent part thus:

"(b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions. . . ."

You question to what extent this amendment supersedes the long-standing rule respecting municipal bonds, as recited, e.g., City of Horton v. Robb, 173 Kan. 398, 246 P.2d 254 (1954), that "municipalities, being creatures of the legislature, cannot issue and sell bonds unless the power to do so is conferred by legislative authority, either expressly conferred or clearly implied, and that any reasonable doubt as to the existence of such power is to be resolved against its existence." 173 Kan. at 401.

This rule is but an application of the general rule regarding municipal powers as those powers were considered prior to 1961. As stated in Clafin v. Walsh, 212 Kan. 1, 509 P.2d 1130 (1973),

"Prior to the home rule amendment Kansas cities were seriously limited in their power to solve local problems by local legislation. Cities existed by and through statutes and had only such powers as were expressly conferred by statute without resort to implication. . . . This concept was substantially changed by the home rule amendment effective July 1, 1961." 212 Kan. at 6.

Thus prior to 1961, whether the proposed undertaking was the issuance of bonds or any other municipal enterprise, it was the rule that there must be express or necessarily implied statutory authority therefor. That, of course, is no longer the case regarding municipal affairs:

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"No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization

. . . .

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Section 5(d) of Article 12 requires a liberal construction of the powers and authority granted cities for the purpose of giving to cities the largest measure of self-government. This provision simply means that the home rule power of cities is favored and should be upheld unless there is a sound reason to deny it. Where the legislature has acted in some area a city's power to act in the same area should be upheld unless the legislature has clearly preempted the field so as to preclude city action. Unless there is actual conflict between a municipal ordinance and a statute, the city ordinance should be permitted to stand." 212 Kan. at 6-7.  
[Citations omitted.]

The "local affairs and government" which the city is constitutionally empowered to determine surely includes the authority to determine local fiscal and financial affairs, including the power to provide for the financing of municipal undertakings, subject, of course, to applicable statutory limitations thereon which conform with Article 12, § 5. The Kansas Statutes Annotated abound with statutory provisions for the issuance of bonds. In virtually each instance, statutory provisions purport to provide authority to cities to authorize bonds for various and sundry purposes. Nothing in these diverse grants of authority implies a legislative purpose to preempt the field and to deny any and all constitutional power to Kansas cities regarding municipal financing through bond issues. Such a legislative act would, of course, be within the power of the Legislature, and an act which applied uniformly to all cities could effectively strip cities of all constitutional authority to provide for the financing of municipal undertakings by the issuance of bonds. No such act has been brought to my attention, however, and an intent to accomplish that purpose should not be attributed to the legislature based merely upon numerous discrete enactments, many

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antedating 1961, which authorize the issuance of bonds for particular purposes and under specified conditions.

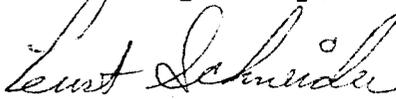
Certainly, the "local affairs" which rest within the province of a Kansas city under Article 12, § 5 includes the authority to provide for the financing of municipal government, and there is no act of the legislature which clearly demonstrates an intent to deprive a city governing body of the use of municipal bonds in the conduct of the fiscal municipal business within its jurisdiction. Indeed, the language of Article 12, § 5(b) suggests that the issuance of municipal bonds is a part and parcel of the "local affairs" which are constitutionally entrusted to Kansas cities. That section provides that cities "shall exercise such determination, [i.e., the determination of their local affairs and government] . . . subject . . . to enactments of the legislature prescribing limits of indebtedness." Thus, the constitution expressly contemplates that cities may, in the course of the conduct of their local affairs under the constitutional authority of this section, incur indebtedness; if they do so, however, they do so subject to applicable statutory limits of indebtedness, whether applicable uniformly to all cities or applicable to only a particular class or group of cities.

You also ask whether a Kansas municipality may lawfully acquire property in another state for use in connection with the operation of a municipal utility pursuant to Article 12, § 5. The operation of a municipal utility is surely, and indeed obviously, a local affair. The city enjoys broad administrative authority to provide for the management and operation of that utility. Obviously, a city may not exercise its municipal police power extraterritorially, because such an exercise becomes, in and of itself, no longer a local matter. The purchase of property does not involve the police power of the city however, and no extraterritorial assertion of municipal powers. The grant of authority to determine and administer local matters in Article 12, § 5 is absolute, and so long as the property acquisition is for the purposes of a local use, in this case the use of a municipal utility, that power may be exercised within or without the state. It is an affirmative and direct grant of authority which is self-executing and needs no statutory explication or implementation. The legislature has not prohibited cities from acquiring property outside the state for municipal utility purposes, and absent such a prohibition, the city is free to exercise its direct constitutional authority for a local municipal purpose, even if it entails the acquisition of real property outside the city, or outside the state. By analogy, the city may also exercise its direct constitutional authority to provide for the financing of that acquisition by the issuance of revenue bonds, for that too

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is a local affair and involves the power to provide for municipal financing which the legislature has not preempted by statutory provision applicable uniformly to all cities. In exercising that power, of course, the city is subject to "enactments of the legislature prescribing limits of indebtedness." In my judgment, cities are subject to legislative enactments prescribing limitations upon the amounts of indebtedness. It would strain this language, indeed, to construe it to include not only limits on amounts of indebtedness, but also restrictions upon the uses to which the proceeds of an indebtedness may be applied.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj

cc: The Honorable Norman E. Gaar  
Senate Majority Leader  
Kansas State Senate  
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Topeka, Kansas 66612