



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 30, 1977

ATTORNEY GENERAL OPINION NO. 77-105

Mr. Dennis G. Hall
Hardesty, Hall and Schlosser
2201 West 29th Street
Topeka, Kansas 66611

Re: Unified School Districts--General Obligation Bonds--
Alteration of Territory Liable For Such Bonds

Synopsis: The legislature is without authority to reduce the territory liable for payment of the principal and interest requirements of general obligation bonds of such territory once such bonds have been issued and sold.

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Dear Mr. Hall:

As attorney for Unified School District No. 321 you request the opinion of this office asking whether the Kansas Legislature can reduce the size of territory liable for general obligation bonds of a unified school district. You advise that some doubt exists among members of the school board whether once bonds have been authorized by affirmative vote, issued and sold the legislature may thereafter detach a portion of the territory originally issuing the bonds, eliminate that portion's liability for such bonds and thereby increase the tax assessment on the remaining property of the district.

We assume from the contents of your letter that the school district in order to raise the necessary funds to build and remodel certain school facilities within the district will issue and sell general obligation bonds pursuant to K.S.A. 72-6761. Such bonds of course are subject to the requirements of the Kansas General

Bond Law, Chapter 10, Kansas Statutes Annotated. *Pessemier v. Plummer*, 135 Kan. 429, 10 P.2d 887 (1932). *Hunziker v. School District No. 26, Sheridan Co.* 153 Kan. 102, 109 P.2d 115 (1941). Of particular importance to the issue here presented are the provisions of K.S.A. 10-119 which provide:

"Whenever a part of the territory of any municipality has been detached and attached to some other municipality, or whenever any municipality has been disorganized according to law and the territory attached to or included in some other municipality or municipalities, such territory shall be liable for the payment of all bonds issued or other indebtedness incurred by such municipality before such detachment or disorganization, and the proper taxing officers of the municipality to which such territory is attached shall levy such taxes upon such attached territory as are necessary to pay its proper proportion of the interest and principal of such bonds or other indebtedness as aforesaid, and such officers may be compelled by mandamus at the instance of the holders of such bonds or other indebtedness to levy such tax."

The language of this statute is clear and unambiguous, and it patently manifests a legislative intent to permanently fix the territory liable for a particular bond issue thereby preventing the escape from such liability by a portion of the issuing municipality's territory if and when it is later detached.

It is a well established rule of municipal bond law in this country that statutes pursuant to which bonds are issued become in themselves enforceable provisions of the contract between the purchasers of such bonds and the issuing authority.¹ Thus the provisions of K.S.A. 10-119 in this case become enforceable by

1. See generally, 64 C.J.S. *Municipal Corporations* § 1956:

"The rights and remedies of such a holder are fixed and determined by the terms of the bond, and by the legislative acts or law relative thereto, at the time the bonds are issued, and generally such rights and remedies of a bond holder cannot be restricted by the municipal corporation, nor can they be adversely affected by subsequent legislation,
. . ."

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the security for the bonds and coupons which he may hold. For the legislature at a date after bonds have been issued to attempt to reduce the area liable for such bonds would impair therefore the contract between the bond holder and the issuing municipality. However Article 1, Section 10 of the United States Constitution provides in part thus:

"No State shall . . . pass any Bill of
Attainder, *ex post facto* Law, or Law impair-
ing the Obligation of Contracts. . . "
[Later emphasis added.]

The legislature cannot therefore impair the obligation of contract between the bond issuing municipality and the bond purchaser. *Watkins v. Glenn*, 55 Kan. 417, 40 P. 316 (1895); *Schiffelbein v. Sisters of Charity of Leavenworth*, 190 Kan. 278, 374 P.2d 42 (1962).

Accordingly it is the opinion of this office that any attempt by the legislature to reduce by legislation the territory liable for general obligation bonds of a Kansas municipality when said bonds have been issued pursuant to Chapter 10, Kansas Statutes Annotated would contravene the provisions of Article 1, Section 10 of the United States Constitution and would be therefore unconstitutional and unenforceable.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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