



STATE OF KANSAS

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Attorney General

April 15, 1977

ATTORNEY GENERAL OPINION NO. 77-122

The Honorable Robert F. Bennett  
Governor of Kansas  
2nd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Counties--Hospitals--Bonds

Synopsis: It is within the constitutional power of the legislature to enact curative legislation, subsequent to the approval of a bond issue for county hospital purposes which is in excess of the statutory authority therefor, to enlarge such authority retroactively and validate bonds previously approved by the voters. The enactment of 1977 Senate Bill No. 459 will not deprive the plaintiffs in *Thomas County Taxpayers Association v. Finney*, Shawnee County District Court, no. 77-CV-0009, of the opportunity to pursue other issues which have been asserted in that litigation, or in any way deprive plaintiffs of their day in court.

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Dear Governor:

You inquire concerning 1977 Senate Bill No. 459, which amends K.S.A. 1976 Supp. 19-1878 to delete the following language:

". . . but not to exceed the original amount authorized to be issued for the purpose of acquiring a site, erecting and equipping said hospital or addition thereto."

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And, the following is added:

"This act shall apply to any tax levied or bonds issued pursuant to the provisions of this section prior to the effective date of this act, and no proceeding hereunder or bonds issued pursuant hereto prior to the effective date of this act shall be held invalid solely by reason that the amount of tax levied or bonds issued exceeds the original amount authorized to be issued for the purpose of acquiring a site and erecting and equipping the hospital or addition thereto."

In 1960, Attorney General John Anderson, Jr., issued an opinion concluding that the deleted phrase authorized the board of county commissioners of a county in which a county hospital had been established under art. 18, ch. 19, K.S.A., to issue bonds for county hospital purposes in an amount which was in excess of the amount of the bond issue originally approved for that hospital. Since that time, many counties have relied upon that interpretation in issuing general obligation bonds for additions to county hospitals in amounts greater than the amounts of original issue, and subsequent attorneys general, following that 1960 opinion, have approved such issues for registration with the State Auditor and now State Treasurer. Review of that opinion, and subsequent reaffirmations thereof by succeeding attorneys general, was prompted by recent litigation concerning a hospital bond issue approved in Thomas County *Thomas County Taxpayers Association, et al. v. Joan Finney, et al.*, in the Shawnee County District Court, no. 77-CV-0009. Careful analysis of the peculiar and unclear language in the course of that litigation has prompted me to conclude that the deleted phrase does not authorize the issuance of general obligation bonds in an amount greater than that approved for the original construction of the hospital.

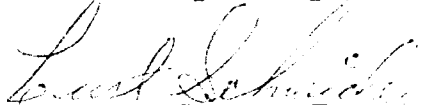
You inquire whether it is an "appropriate and constitutional exercise of legislative power for the Legislature to retroactively approve taxes levied and bonds authorized to be issued, either of which were in excess of their authority at the time the events were purported to have occurred." It is settled by numerous decisions that where bonds are issued in excess of existing authority therefor, the legislature may subsequently enact curative legislation which validates such bonds and renders them enforceable

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and valid obligations of the political subdivision. 64 Am.Jur.2d *Public Securities and Obligations*, § 376 et seq. The 1949 legislature, which originally enacted the section now found at K.S.A. 1976 Supp. 19-1878, could have authorized a county to issue bonds for county hospital purposes in excess of the amount of bonds originally issued for its hospital. While it did not, it is fully within the constitutional power of any subsequent legislature to enlarge that 1949 authority to apply prospectively, or to furnish that additional bond authority retroactively, so as to validate issues previously approved under that section. Such curative legislation is not uncommon in Kansas. See e.g., K.S.A. 72-6761a. As a member of the Kansas Senate, you had occasion to vote for such curative legislation respecting certain bond issues of a city of the second class, now found at K.S.A. 12-869.

You inquire, secondly, whether the "fact that the suit is now pending on this particular issue, as well as others, in any way justify [sic] state action until that suit can be appropriately decided." You indicate that persons from Thomas County, as well as counsel for the plaintiffs in the cited case, have contacted you, indicating their belief that this bill was primarily designed to "deprive them of their day in court." The bill is designed, first, to remove any possible cloud upon the validity of county hospital bond issues which have been approved since 1960; secondly, to authorize the issuance of bonds in amounts greater than the amounts originally issued, to provide much-needed flexibility to counties in the face of rapidly rising construction costs; and thirdly, to assure that no county, including Thomas County is penalized for reliance upon the opinion of Attorney General Anderson. For the greater part of two decades, counties throughout the state have authorized bond issues for county hospital purposes under this section, in reliance upon the 1960 interpretation. As a result, many issues exceed the amounts which the statute permits. The pending litigation is not a basis for inaction; on the contrary, it demonstrates that the need for corrective legislation respecting all such bond issues is all the more urgent. So far as concerns the Thomas County litigation, we are assured by plaintiffs' counsel that a number of other issues remain. Your signing this bill will in no fashion deprive the plaintiffs of their day in court.

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj