



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 27, 1977

ATTORNEY GENERAL OPINION NO. 77- 178

Mr. Jerry L. Griffith
City Attorney
165 West First Street
Post Office Box 58
Hoisington, Kansas 67544

Re: Cities--Industrial Fund--Use of

Synopsis: Although housing for the elderly is a valuable community asset, it is not in and of itself an industrial inducement, and the industrial fund created pursuant to K.S.A. 12-1617h may not be used to provide operating funds for such a facility.

* * *

Dear Mr. Griffith:

You inquire concerning the legality of a proposed use of the proceeds of the levy authorized by K.S.A.12-1617h et seq.

You advise that a nonprofit corporation has been organized through the Hoisington Chamber of Commerce to provide housing for the elderly by building 24 apartment units. This housing will qualify for tax exempt status under I.R.S. regulations, and will qualify for exemption under certain Kansas statutes. The construction is to be financed by a loan or grant from the Farmers Home Administration. It is a requirement by two percent of the project cost be on hand at the time of start-up to be used as operating funds during the first year of operation. Because these funds must be available prior to operation, and are not a part of the financing, they must be raised by popular subscription or otherwise. The governing body is considering contributing the sum of approximately \$2,700 from the industrial levy fund for that purpose, representing approximately one fourth of the 2% figure.

Mr. Jerry L. Griffith
Page Two
May 27, 1977

K.S.A. 12-1617i provides that funds derived from the industrial levy shall

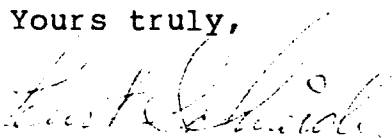
"only be used . . . for the purpose of inducing industries to locate within said city or near its environs"

The levy is to be used "for the purpose of inducing industries to locate within [or near] . . . the said city." The levy is not authorized to be used to furnish operating funds to an industry which the city seeks to attract. See Opinion No. 61-160 Vol. III, Opinions of the Attorney General, p. 120. The city is given broad discretion in the use of the industrial fund, but is not unlimited discretion. Obviously, a great variety of municipal improvements, from better street lighting to better police protection to improved drainage, may render any given community a more attractive place to live, and indirectly, a more attractive site for potential industry. However, clearly the industrial fund is not designed as a general capital improvement fund for the city, nor as a general operating contingency fund.

The use of the industrial fund for the operation of housing for the elderly is a purpose entirely unrelated to the purpose of "securing industries to locate" in the city. It is entirely predictable that the new project will make at least a few housing units available which are not occupied by elderly persons. Whether this additional housing will serve directly or indirectly as an inducement to industry to locate in or near the city is entirely conjectural and speculative, however. In my judgment, an expenditure of moneys from the industrial fund should bear some demonstrable and direct relation to the statutory purpose of "inducing industries to locate" in or near the city, and the operation of a housing project for the elderly, in and of itself a commendable undertaking, bears no such relationship whatever.

It is my opinion, accordingly, that moneys for the industrial fund may not be applied to the operating fund of the housing project described above.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj