

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 8, 1977

ATTORNEY GENERAL OPINION NO. 77-265

Mr. Charles D. Stough
Stough and Kroeker
Attorneys at Law
901 Kentucky Street, Suite 306
Lawrence, Kansas 66044

RE: Counties -- Highways -- Improvements

SYNOPSIS: Upon designation of a highway as a primary arterial highway, a county may issue bonds for the construction or improvement of said highway, and levies to repay such bonds are exempt from the aggregate levy limitations of K.S.A. 1976 Supp. 70-5001 *et seq.* Such bonds are not subject to the bonded debt limitations of ch. 10, art. 3, K.S.A.

* * *

Dear Mr. Stough:

On behalf of the board of county commissioners, you inquire concerning the cooperative improvement of Clinton Parkway by Douglas County and the City of Lawrence. The county has heretofore designated the parkway a primary arterial highway pursuant to K.S.A. 1976 Supp. 68-581. You enclose a copy of an agreement between the city and the county, respecting this improvement, whereby the city designates the county as its agent for completion of the project. The county heretofore, by an agreement dated June 6, 1951, with State Highway Commission, to which the Secretary of Transportation of the State of Kansas is successor, has delegated authority to the latter to act as its agent in the approval of plans, and the construction and maintenance of certain highways, the county and city mutually agree that the Secretary of Transportation, as agent for the county, will supervise the project, negotiate with and report to the Federal Highway Administration, and administer the payments due the contractor.

Mr. Charles D. Stough
August 8, 1977
Page Two

You inquire whether the county may issue bonds therefore under K.S.A. 1976 Supp. 68-584, which commences thus:

"Of the board of county commissioners or the governing body of the city shall determine that any of the costs incurred or to be incurred by the county or city, as the case may be, in carrying out the provisions of K.S.A. 68-581 . . . in relation to one or more county roads or highways or city streets or proposed streets or portions of one or more streets or any combination thereof should be paid by moneys derived from the issuance of general obligation bonds of the county or city, the board or governing body of the city . . . may issue such bonds for such purpose or purposes"

This bond authority extends to projects undertaken pursuant to K.S.A. 68-581, -582 and -583, and includes the Clinton Parkway, as a primary arterial highway under designation by the board of county commissioners. You inquire, also, whether such bonds will be outside the aggregate levy limitations of K.S.A. 1976 Supp. 79-5001 et seq., and any bonded indebtedness limitations imposed by Kansas statutes. K.S.A. 1976 Supp. 68-584 provides that:

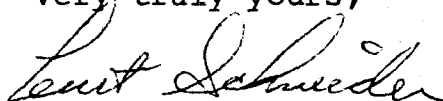
"Bonds issued under the provisions of this act shall not be subject to or be included in computing limitations upon bonded indebtedness of counties and cities prescribed under . . . article 3 of chapter 10 of the Kansas Statutes Annotated and amendments thereto."

K.S.A. 1976 Supp. 79-5011, of the "tax lid" provides that its limitations shall not apply to the levy of taxes for the payment of "[p]rincipal and interest upon bonds and temporary notes." Thus, the bonded indebtedness limitations of ch. 10, art. 3, K.S.A., do not apply to the bonds issued under K.S.A. 1976 Supp. 68-584, and the tax lid does not apply to levies required to pay the principal and interest on such bonds. K.S.A. 1976 Supp. 68-584 imposes its own limitation on the bonds which may be issued thereunder, directing that the total amount of bonds which may be issued without referendum approval may not exceed more than two percent of the assessed tangible valuation of the issuing subdivision.

Mr. Charles Stough
August 8, 1977
Page Three

If you should have further questions concerning this project,
please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:en