

STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

August 17, 1977

ATTORNEY GENERAL OPINION NO. 77-269

Mr. Don Matlack  
City Attorney for Belle Plaine  
301 North Market  
Wichita, Kansas 67202

Re: Cities--Funds--Use of

Synopsis: Monies in the industrial fund, derived from the levy authorized by K.S.A. 12-1617h, may be used only for public purposes, and may not be used to provide operating capital, or to pay operating expenses, of a private industry or business.

\* \* \*

Dear Mr. Matlack:

You inquire concerning a proposed use of monies in the industrial fund of the City of Belle Plaine, which were collected under the levy which is authorized by what is now K.S.A. 12-1617h, which states in pertinent part thus:

"Incorporated cities are hereby authorized to levy annually upon all the taxable tangible property within said city a tax . . . for the purpose of creating a fund to be used in securing industries or manufacturing institutions for such city or near its environs . . . ."

K.S.A. 12-1617i directs that the proceeds of the tax shall be placed in an industrial fund, and shall be used

Mr. Don Matlack  
Page Two  
August 17, 1977

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

The question is raised whether monies in the fund may be used, as a partial inducement to a physician to move his practice to Belle Plaine, to purchase equipment, to pay rental on an office location during the first months of the practice, and to pay certain overhead expenses during those first months. In an opinion numbered 61-160, the Attorney General stated thus:

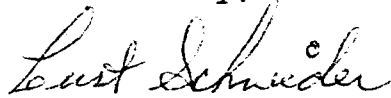
"The inducing of industry to locate in a city or locate near its environs suggests the advertising of the city and various advantages to be gained by industry in locating there. It also suggests the conducting of such lawful activities as may influence and persuade prospective industries to locate within the city or near its environs. We think such inducement could properly include the purchase of real property to be offered for sale to prospective industries at prices not less than those paid by the city . . . . The availability of building sites in such an area would quite probably be an inducement to industries to locate in said area. However, we believe the city could not donate the sites but would have to sell them in order that public property not be used for private purposes."

Doubtless, the offer of public funds as a source of financing to meet operating expenses would constitute an effective inducement to an industrial prospect. However, the use of proceeds of the levy to provide operating capital for a private enterprise would constitute the use of public funds for a private purpose. The kinds of inducements which a city may offer through its public funds are doubtless broad. However, the uses to which the industrial fund may be put are not unlimited, and a paramount restriction is that the funds not be used for private business and industrial purposes. In my judgment, use of the funds to pay rental for an office for the practice of medicine, and to pay overhead expenses of the practice, are not permissible uses of the fund. Monies of the fund could be used to purchase equipment for rental or resale to the physician to assist in establishment

Mr. Don Matlack  
Page Three  
August 17, 1977

of a practice, but the fund could not be used for the purchase of equipment to be given or donated to the physician as his or her personal property, for such an expenditure would likewise constitute a use of the fund for a private and personal purpose.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj