

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 22, 1977

ATTORNEY GENERAL OPINION NO. 77- 281

Mr. Donald A. Bell
Curfman, Brainerd, Harris, Bell,
Weigand & Depew
Suite 830 - 106 West Douglas Avenue
Wichita, Kansas 67202

Re: Bonds and Warrants--General Bond Law--Refunding Revenue Bonds

Synopsis: (1) Revenue bonds refunded pursuant to amended K.S.A. 10-1211 are governed by the provisions of K.S.A. 10-116a, as amended.
(2) K.S.A. 10-116a, as amended, permits the combination of issues totaling individually less than \$1,000,000 to produce the required aggregate limitation of \$1,000,000.
(3) Refunded bonds issued per amended K.S.A. 10-1211 and which are revenue in nature need not be sold at public sale per the requirements of K.S.A. 10-106.

* * *

Dear Mr. Bell:

As bond counsel for the City of Beloit you request the opinion of this office on three questions regarding refunding revenue bonds previously issued pursuant to K.S.A. 10-1201 *et seq.* You advise that the city desires to issue revenue refunding bonds pursuant to authority granted via K.S.A. 10-1211, as amended by Chapter 58, Laws of 1977. We understand three separate issues, each less than \$1,000,000, will be refunded, however the aggregate for the refunding issue will exceed the \$1,000,000 amount.

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Initially, you ask two questions regarding the application of recent amendments to both K.S.A. 10-116a and K.S.A. 10-1211 as found at Chapter 58, Laws of 1977. The former now in part reads:

"Any municipal or quasi-municipal corporation which has prior to the effective date of this act issued revenue bonds under the laws of the state of Kansas, may issue, . . . revenue bonds pursuant to the provisions of this act to refund any previous issue or issues or part thereof of its outstanding revenue bonds, except that no previous issue or issues in an aggregate amount of less than one million dollars (\$1,000,000) shall be refunded hereunder." [Emphasis added.]

The latter now reads in part thus:

"Any municipality governed by the provisions of this act having issued revenue bonds under this act or any previous authority may, from time to time, issue revenue bonds pursuant to the provisions of this act to refund any previous issue or part thereof of its outstanding revenue bonds. Such refunding revenue bonds shall be issued in the manner prescribed by and subject to the provisions of K.S.A. 10-116a, as amended." [Emphasis added.]

First, you inquire whether the \$1,000,000 limitation as provided in K.S.A. 10-116a, as amended, governs an issue authorized pursuant to K.S.A. 10-1211 as amended. As above noted, K.S.A. 10-1211 now requires that any refunding bonds to be issued thereunder must be done so in a manner prescribed by and subject to K.S.A. 10-116a. The language employed in this requirement appears clear and unambiguous, and we know of no reason or set of circumstances which would exempt a refunding bond issue authorized per amended K.S.A. 10-1211 from the \$1,000,000 requirement provided in amended K.S.A. 10-116a.

Second, you then ask whether the \$1,000,000 requirement applies to the amount of each individual issue, or rather permits joining

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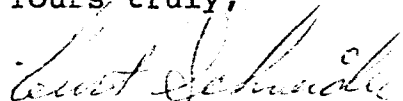
issues of less than \$1,000,000 to produce an aggregate of more than \$1,000,000. This question centers upon the language employed by the legislature amending K.S.A. 10-116a, (Ch. 58, L. 1977) which we emphasized, *supra*:

". . . no previous issue or issues in an aggregate amount of less than one million dollars
. . . shall be refunded hereunder."

Close examination of this sentence reveals the words "aggregate amount" to be key to ascertaining legislative intent. "Aggregate amount" appears as the object in the prepositional phrase "in an aggregate amount." That adjective phrase modifies the dual subject of the sentence expressed in the alternative, "issue or issues." As such the sentence can be interpreted logically and reasonably as meaning that more than one issue may be refunded provided their aggregate totals \$1,000,000 or more at the time the refunding bonds are issued. In our judgment such a conclusion is consonant with the broad applicability of amended K.S.A. 10-116a and the general revenue bond law, K.S.A. 10-1201 *et seq.* Accordingly, it is the opinion of this office that outstanding revenue bond issues, while individually of an amount less than \$1,000,000, may be combined into a single issue of \$1,000,000 or more to satisfy the requirements of K.S.A. 10-116a, as amended.

Your last query is whether revenue refunding bonds governed as they are by K.S.A. 10-116a, as amended, must comply with the public sale provisions of K.S.A. 10-106. K.S.A. 10-106 applies categorically to bonds which are not secured solely and only by revenues or whose principal amount does not exceed \$100,000. We have reviewed the supplied material relative to the Beloit, Kansas, Electric Utility Refunding Revenue bond issue and note that its inherent characteristics are those of revenue bonds issued per K.S.A. 10-1201 (*i.e.*, secured solely and only by revenues paid into the "Electric Utility Fund"); that this issue is also refunding in nature does not alter these fundamental attributes. Thus, it is our considered opinion that such bonds do not fall within the purview of K.S.A. 10-106.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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